



Appeal Decision

Site visit made on 11 February 2020

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2020

Appeal Ref: APP/A5840/W/19/3240087

135-137 Commercial Way, London SE15 6DB

- 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 Jayesh Patel against the decision of the Council of the London Borough of Southwark.
 - The application Ref 19/AP/1480, dated 16 May 2019, was refused by notice dated 20 August 2019.
 - The development proposed is change of use of ground floor and basement from retail (A1) to restaurant (A3) and erection of extract duct to the rear elevation.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of the development provided on the planning application form has been replaced by a fuller version on the decision notice and in subsequent appeal documents. I consider that subsequent description to be more representative of the proposal and I have therefore used it within this decision.

Main Issue

3. The main issue in this appeal is the effect of the proposal on a shop protected in the development plan.

Reasons

4. The appeal site is part of a small commercial parade which consists of 2 hot-food takeaways and 2 retail units, the appeal site being one of the latter. Policy 39 of the Peckham and Nunhead Area Action Plan 2014 (AAP) states that the Council will "protect the shops along commercial way..." and identifies this parade on an accompanying map. The change of use of the appeal site from retail use to a restaurant would conflict with that policy.
5. The AAP refers to Saved Policy 1.10 of the Southwark Plan 2007 (SP), and the appellant emphasises that the appeal site is not identified as a designated protected shopping frontage under the SP. However, the AAP was adopted more recently than the SP, and on that basis any difference in respect of the earlier policies does not diminish the protection to the retail use of the appeal site afforded by the AAP, or the substantial weight I attach to it.

6. The appellant has provided evidence that the most recent retail occupier of the site had been making substantial losses prior to vacating the premises. I have had regard to Policy 1.10 of the SP which refers to premises in protected shop frontages not making a profit over a two year period. However, the detailed evidence in respect of losses only relates to a single financial year, although I acknowledge that the site has been vacant and that the previous occupant indicates that a net loss over the current financial year was likely. That said, mindful of the period that the site has been vacant, it has not been demonstrated that sufficient effort has been made to let the premises or that it has been appropriately marketed in order to find a new tenant. It has not therefore been demonstrated that there is no interest in occupying the site for retail purposes and that there are no other retail uses which could successfully operate from the premises.
7. I saw that there are a number of other retail uses in the area beyond this small parade of units, including other convenience stores. However, based on what I have seen and read, there is no substantive evidence that a significant number of these units are vacant or unviable, and that there is no demand for retail premises in this area. Within that context, whilst there are retail uses which may meet the needs of the community in this area, this in itself does not justify the loss of a retail use which would be contrary to adopted planning policy.
8. I acknowledge that the proposed restaurant use could also serve the community in the area and would be of a different character to a hot-food takeaway. However, the proposal would lead to this small parade being dominated by food related uses as opposed to retail, and would fundamentally alter the nature of this block of units contrary to the AAP.
9. In support of the appeal, the appellant has referred to a planning permission which has been granted for a change of use from retail to residential at 29 Meeting House Lane, which the appellant indicates had a similar degree of protection as the appeal site under the AAP. However, I do not have full details of the circumstances that led to that proposal being accepted and so cannot be certain it represents a direct parallel to the appeal proposal, including with regard to the history and nature of the site and nearby uses, vacancies and marketing. In any event I have determined this appeal on its own merits.
10. I note the frustrations expressed by the appellant in relation to the advice from the Council and the decision process leading up to this appeal. However, this is not a matter for this appeal which I have determined on its planning merits.
11. The site is within the Peckham Hill Street Conservation Area (CA) and as such I have had regard to the duty to pay special attention to the desirability of preserving or enhancing its character or appearance, particularly in respect of the proposed extraction duct on the rear elevation. However, due to the screening effect of the existing building on the site and the context established by ducts on adjacent premises, I consider this element of the proposal and the proposal as a whole would not have a harmful impact on the character or appearance of the CA. I note that this reflects the conclusions of the Council.
12. The proposal would result in the loss of a shop protected under Policy 39 of the AAP and would therefore conflict with that Policy. Based on the evidence before me, material considerations are not of sufficient weight to indicate that the proposal should be determined other than in accordance with the

development plan. For the reasons given above, and taking account of all material planning considerations, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR