
Appeal Decision

Site visit made on 10 February 2020

by C L Humphrey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th March 2020

Appeal Ref: APP/A5840/W/19/3241064
209 Old Kent Road, London SE1 5NA

- 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 D Akinbo against the decision of the Council of the London Borough of Southwark.
 - The application Ref 19/AP/2349, dated 1 August 2019, was refused by notice dated 4 October 2019.
 - The development proposed was originally described as 'Change of Use to A1 Shop to Sui Generis Nail & Beauty Shop'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant states 'the original application was submitted as a change of use from A3 to Sui Generis.' However, while section 6 of the planning application form states that the 'last known use' was 'A3 Café selling food to public', the description of the proposal in section 5 of the application form is 'change of use to A1 shop to sui generis nail & beauty shop'.
3. The appeal form describes the proposal as 'Change of use from A1 to nail and beauty shop (Sui Generis)', which is the description used by the Council on its decision notice. The appellant asserts that the Council revised the description of development without his agreement although it appears, on the basis of the evidence before me, that the Council made very limited changes, altering the first 'to' in the original description to 'from' and moving the term 'sui generis' to the end of the description.
4. There is very limited information before me regarding the lawful use of the appeal premises. Section 2 of the Council's officer report states 'Planning history suggests that the last accepted use of this premises is A1', however I have not been provided with any evidence of this. Whilst the appellant has provided an image from Google which appears to show the premises in use as a Class A2 solicitor's office, this dates from 12 years ago.
5. In the context of this appeal, which is made under section 78 of the Town and Country Planning Act 1990, the lawful use of the premises is not for me to judge. However, since the appellant did not agree to the revised description, I have considered the appeal on the basis of the original description given at section 5 of the application form and set out in the banner heading above.

Main Issue

6. The effect on the vitality and viability of the protected shopping frontage.

Reasons

7. The appeal site is located within a Protected Shopping Frontage and therefore saved Policy 1.9 of the Southwark Plan (SP) is relevant. Subject to appropriate conditions, the Council has not identified any conflict with criteria iii, iv or v of this policy. On the basis of the submitted evidence I see no reason to disagree.
8. However, the policy sets out that 'Planning permission for a change of use from A1 Use Class within protected shopping frontages.... will be granted provided that (i.) the proportion of units within any protected shopping frontage in A1 Use Class does not fall below 50%; and (ii.) the premises have been vacant for a period of at least 12 months with demonstrated sufficient effort to let, or have not made a profit over a 2 year period.'
9. The proportion of units within A1 use is below the 50% threshold; the appeal proposal would reduce this further, contrary to saved SP Policy 1.9 criteria (i).
10. I have no evidence that the appeal premises have been vacant for a period of at least 12 months. Moreover, whilst the appellant asserts the unit has been 'subject to marketing efforts in the form of an advertisement placed in front of the premises', I have not been provided with evidence to support this or to demonstrate the duration of such 'marketing'. Nor do I have any information to confirm the appellant's statement that the premises were 'run at a loss and that this was the reason for the premises to be vacated by the previous occupiers.' Thus, conflict also arises with criteria (ii) of saved SP Policy 1.9.
11. The weight to be attached to the development plan does not hinge on its age. Rather, the National Planning Policy Framework (Framework) makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. The importance of ensuring the viability of town centres is recognised by the Framework, and saved SP Policy 1.9 is consistent with this aim. Therefore, the conflict between the proposal and the policy should be given significant weight in this appeal.
12. The Council's officer report concludes that 'The development proposes a use that is akin to existing uses and uses that would be expected within a retail parade'. Moreover, I note that, in the appeal case referred to by the appellant¹, the Inspector stated, 'hairdressers are classed as A1 and I consider nail bars to be a comparable use and equally appropriate in a shopping area'.
13. However, he went on to say, 'It is conceivable that an over-saturation of nail bars could harm the functioning of a shopping centre'. In that case, the Inspector found there was not an over-concentration and, whilst finding conflict with the development plan, concluded the use 'contributes positively to the vitality and viability' of the district centre and allowed the appeal.
14. In the appeal before me, the circumstances are different. At the time of my site visit, I noted there were 4 other beauty and nail bars in the immediate vicinity of the appeal premises. This, in the context of a protected shopping frontage which already has a low proportion of units in A1 use, does represent an

¹ APP/E5900/W/19/3234593

over-concentration. In view of my findings in this regard, I give little weight to the conclusions of the Inspector in the other case.

15. If this appeal were to succeed and the proposed nail and beauty shop brought into use, any future material change of use of the premises would require planning permission. However, the proposal would nevertheless result in a further reduction in the proportion of units in A1 use in the protected shopping frontage.
16. For the reasons set out above, I conclude that the appeal proposal would have a harmful effect on the vitality and viability of the protected shopping frontage. Thus, it would fail to accord with the retail protection aims of Strategic Policy 3 of the Southwark Core Strategy, saved SP Policy 1.9 and the Framework.
17. Whilst the Council's reason for refusal also refers to 'Policy P32 of the New Southwark Plan', I have not been provided with details of this emerging policy and so am not able to take it into account in this case.

Conclusion

18. The proposal would conflict with the development plan as a whole and there are no material considerations, including the provisions of the Framework, which indicate that the decision should be taken otherwise than in accordance with it. 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