



Appeal Decision

Site visit made on 13 May 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2020

Appeal Ref: APP/T5150/W/20/3245872

58 Salusbury Road, London NW6 6NP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Sunil Patel (Hyperchem Ltd) against the Council of the London Borough of Brent.
 - The application Ref 19/3439, is dated 25 September 2019.
 - The proposed development was initially described as the use of the premises for "retail primary use at the front (A1) and sub-dividing two rooms for ancillary use for Doctor and Dentist use (D1)".
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Decision

1. The appeal is allowed and planning permission is granted for the use of the premises for retail use (Use Class A1) to the front, subdivision and change of use of rear office and store to medical services (Use Class D1) with replacement of door with window on South elevation and creation of a fire exit on North elevation at 58 Salusbury Road, London NW6 6NP in accordance with the terms of the application, Ref 19/3439, dated 25 September 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan and 190304-01-P0.
 - 3) The premises shall be used for a mix of uses consisting only of uses that fall within Classes A1 and D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended)(or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) and the use of the room labelled 'retail area' on the proposed ground floor plan (Plan 190304-01-P0) shall only be for purposes falling within Class A1 of that Order. The premises shall be used for no other purpose.
 - 4) The external materials of the development hereby permitted shall match those used in the existing building.
 - 5) Prior to the installation of the window hereby approved, details of the design of the window, including plans and sections at a recognised scale of between 1:1 and 1:20, shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Application for costs

2. An application for costs was made by Mr Sunil Patel (Hyperchem Ltd) against the Council of the London Borough of Brent. That application will be the subject of a separate decision.

Procedural Matter

3. The description used in the heading above has been taken from the original application form, albeit with some unnecessary descriptive elements removed. However, the original description did not refer to the building operations that are part of the proposed development and was not used subsequently by either main party.
4. As such, the description used in the decision above is based upon the description that appears to have been agreed between the main parties as part of the validation of the application. I have, however, omitted the reference to 'retention' as this is not an act of development. Both parties have been provided with an opportunity to comment on the amended description, with the appellant considering it acceptable and the Council not responding. As the amended description is very similar to the description that was previously agreed by both main parties and was the subject of public consultation, I consider that no party is prejudiced by the use of the amended description.

Main Issue

5. The application that is the subject of this appeal was not determined by the Council. However, the Council contends that the use of the building would be contrary to policy DMP2 of the London Borough of Brent Local Plan Development Management Policies (BLPDMP), adopted November 2016, the aim of which is to ensure that Brent's town centres provide customer choice and a diverse retail offer. The Council also contend that the proposal would be contrary to policies BE4 and DMP1 of the emerging Draft Brent Local Plan (DBLP). Having regard to these policies, and as the Council's submissions do not address the proposed building operations or raise objections in any other respect, I consider the main issue to be the effect of the development on the retail function of the Queen's Park Town Centre (QPTC).

Reasons

6. The appeal relates to the ground floor premises at the site which is designated, by the BLPDMP, as being within the QPTC and part of its primary shopping frontage. The evidence before me indicates that the premises was formerly used as a shop falling within Class A1 of the UCO¹. The proposed change of use would result in the front part of the building being used as a shop, with the rear part of the building being used for medical and dentistry purposes which would fall within Class D1 of the UCO if considered in isolation. As the terms of the application indicate that the building would be used for a combination of uses, the overall use would not fall solely within either Class A1 or Class D1, as defined by the UCO. Whilst I have had regard to the concerns of the Council in respect of whether the building would be used as described, I have determined the appeal on the basis that it would be.
7. Policy DMP2 of the BLPDMP states that uses other than those falling within Classes A1 or A2 of the UCO will be permitted where the proportion of the frontage within those uses would not be reduced to below 65%, with this being varied to 50%

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended).

where the vacancy rate exceeds 10%. The supporting text of the policy states that the proportion of frontage should be calculated, in metres, on the basis of the length of the primary frontage in the centre as a whole. Neither main party has provided definitive evidence in respect of the length of the primary frontage, the mix of uses within it or the extent of the frontage that is made up of uses falling within or outside Use Classes A1 and A2.

8. On visiting the site and the surrounding area, it appeared that the primary frontage of the QPTC features a substantial number of uses that do not fall within Use Classes A1 or A2 and few vacant premises. As such, whilst I do not have definitive evidence before me, it appears that the proportion of the primary frontage that is used for purposes falling within Use Classes A1 or A2 is below the abovementioned thresholds. This proposal would result in the introduction of a use that does not fall entirely within Use Class A1 or A2 and, therefore, would result in the further reduction of the proportion of the primary frontage that falls within those uses. Accordingly, in the absence of evidence to the contrary, it appears that the proposal does not accord with Policy DMP2 of the BLPDMP.
9. However, the appellant's submissions show that the front part of the building would function in a manner that is similar to a shop. Moreover, as is also required by Policy DMP2 of the BLPDMP, the premises would retain an active frontage facing Salusbury Road and would continue to appear as a shop. As such, it would be likely that the proposed use of the building would continue to contribute to the vitality of the primary shopping frontage and the QPTC overall. Furthermore, by retaining a retail element at the front part of the premises, the proposal would not cause a reduction of customer choice or the diversity of retail offer to a greater extent than what could occur even if the use of the building remained wholly within Class A1 of the UCO.
10. A condition limiting the use of the building would prevent the retail element of the use diminishing to an extent that the frontage no longer resembles a shop and would address the conflict with the development plan. In this case, I am satisfied that a condition to this effect would meet the tests of a condition and make a development acceptable that would otherwise be unacceptable. As such, imposing a condition to control the use of the building would accord with paragraphs 54 and 55 of the National Planning Policy Framework (The Framework).
11. Although the appellant's submissions indicate that the proposed toilet would be provided primarily to meet the needs of the part of the building that would be used for purposes falling within Use Class D1, I have no basis to conclude that the presence of a toilet would prevent the remainder of the front part of the building functioning in a manner that would be akin to a shop. As such, the presence of a toilet does not lead me to conclude that the building would not be used as proposed.
12. For the reasons given above, the proposal would have an acceptable effect on the retail function of the QPTC. Therefore, whilst it appears that the proposed development would not comply with the detailed criteria of policy DMP2 of the BLPDMP, it would align with the overall aim of that policy which is to ensure that Brent's town centres provide customer choice and a diverse retail offer. Furthermore, the proposal would accord with paragraph 85 of The Framework which states that planning decisions should support the role that town centres play and take a positive approach to their management and adaptation.
13. The Council have stated that the emerging DBLP has been the subject of public consultation but has not been examined. As such, as it is not certain that emerging policies DMP1 or BE4 will be adopted in their current form, I afford them

minimal weight. In any event, emerging Policy DMP1 appears to be of limited relevance to this matter and, as far as it would be relevant to the proposed development, emerging Policy BE4 is very similar to policy DMP2 of the BLPDMP. As such, the emerging policies would not lead me to reach a different conclusion.

Other Matters

14. The proposed replacement of a door on the elevation facing Summerfield Avenue with a window would have the potential to change the appearance of the building. Limited details of the proposed replacement window have been provided, but a condition can be imposed to require details of the window to be submitted and agreed prior to its installation in order to ensure that the window compliments the appearance of the existing building. The insertion of a door on the elevation facing the courtyard at the rear of the site would represent a minor alteration to the building that would have a neutral effect on the character and appearance of the area. As such, subject to the imposition of suitable conditions, the proposal would not detract from the character and appearance of the area.
15. The Council have identified that the application was not accompanied with submissions addressing transportation matters. However, the Council have not clarified why such information would be required, have identified that no objection was raised to the proposal by the Council's Highways Unit and have not identified any harm arising from the proposal in this respect. Accordingly, the evidence before me does not give me reason to conclude that the transportation implications of the development would be unacceptable.

Conclusion and Conditions

16. For the reasons given above, I conclude that the appeal should be allowed and planning permission should be granted.
17. In the interests of clarity, I have imposed a condition to require the development to be undertaken in accordance with the approved plans. A condition controlling the use of the building is also imposed in order to ensure that the retail function of the primary shopping frontage and the QPTC is maintained. In the interests of maintaining the character and appearance of the building and the surrounding area, I have also imposed conditions requiring the use of materials that match the existing building and the details of the proposed window to be submitted and agreed by the Council. Whilst I note that the appellant would prefer the use of a condition requiring the proposed window to match the existing, as the windows are shown to be of different sizes, I do not consider it appropriate to use such a condition.
18. Notwithstanding the suggestion of the Council, as the application is not seeking advertisement consent, I do not consider it necessary to impose the standard conditions that are applicable to applications for advertisement consent.

Ian Harrison

INSPECTOR