



Appeal Decision

Site visit made on 15 June 2020

by P W Clark MA(Oxon) MA(TRP) MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 6th July 2020

Appeal Ref: APP/X5990/W/20/3247506

12 Cardinal Walk, London SW1E 5JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by LS Cardinal Limited against the decision of City of Westminster Council.
 - The application Ref 19/07795/FULL, dated 2 October 2019, was refused by notice dated 12 December 2019.
 - The application sought planning permission for use of 12 Cardinal Walk as restaurant (Class A3), and associated external alterations including the setting out of external tables and chairs without complying with a condition attached to planning permission Ref 17/07672/FULL, dated 27 March 2018.
 - The condition in dispute is No 3 which states that: "You must not sell any take-away food or drink on the premises, even as an ancillary part of the primary Class A3 use."
 - The reasons given for the condition is: "We cannot grant planning permission for unrestricted use in this case because it would not meet TACE8 of our Unitary Development Plan that we adopted in January 2007".
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Decision

1. The appeal is allowed and planning permission is granted for use of 12 Cardinal Walk as restaurant (Class A3), and associated external alterations including the setting out of external tables and chairs at 12 Cardinal Walk, London SW1E 5JE in accordance with the application Ref 19/07795/FULL dated 2 October 2019, without compliance with condition number 3 previously imposed on planning permission Ref 17/07672/FULL, dated 27 March 2018 but subject to all other conditions previously imposed on the planning permission Ref 17/07672/FULL, dated 27 March 2018 and with condition 1 interpreted to include the Operational Management Plan for the premises dated October 2019.

Procedural Matter

2. This application and appeal was made before the Town and Country Planning (General Permitted Development)(England)(Amendment) Order 2020 gave a temporary permission for the change of use of a restaurant and cafe and any land within its curtilage to a use for the provision of takeaway food at any time during the period from 24 March 2020 to 23 March 2021. That permitted development is a temporary measure initiated during the coronavirus outbreak. I do not draw from that temporary provision any inference in relation to the current appeal which is for a permanent change to the condition in dispute.

Reasons

3. The sole main issue in this appeal is the effect of the proposal on the living conditions of neighbouring residents. Paragraph 8.97 of the City of Westminster Unitary Development Plan adopted 24 January 2007 identifies the potential problem; "Takeaways can cause additional litter, traffic and parking problems and can generate late night pedestrian and vehicular activity, including noise from cars and motorcycles providing home delivery services." I consider these potential impacts in turn.
4. In this case, the operation of the premises is limited by condition 6 to the hours between 09.00 and 22.30, the use of external tables is required by condition 7 to cease by 21.00 and condition 9 requires barriers to be erected between 21.00 and 22.30 to prevent access to the open area in front of the restaurant. None of these conditions is proposed to be changed by the current appeal proposal and so there should be no question of late night pedestrian and vehicle activity arising.
5. There is no specific provision in this proposal to deal with litter or traffic and parking problems consequent on a take-away function operating at normal times but the proposal is located on the first floor of a managed precinct where it can be expected that any littering abuse would be dealt with by the precinct management. The location is such that there could be no expectation from potential customers during normal hours of operation that they could drive up and park directly outside the premises without being subject to the normal parking controls which apply in the area. Possibly for that reason, it is clear from the submitted documentation that the takeaway function is expected to be carried out largely as a home delivery operation.
6. The restaurant's location on the first floor terrace of the Cardinal Place precinct is within about 30m of the façade of a residential apartment building known as The View, 20 Palace Street but the only pedestrian access is from the direction away from The View, about 50m away from its façade. Although there is a pergola over part of the terrace in front of the restaurant and a perforated screen and planting along the edge of the terrace facing The View, these are unlikely to afford any particular acoustic benefit, so distance is relied upon to protect residents of The View from any noise arising from the comings and goings of the restaurant patrons.
7. That distance was clearly thought to be sufficient to allow the premises to be used as a restaurant. Unlike the comings and goings of seated patrons, who can sometimes be noisy in a large or celebratory party, the comings and goings of delivery personnel are likely to be less boisterous, so I am not convinced that the addition of a takeaway function to the service provided by these restaurant premises would give rise to any noticeable effect on the noise environment of local residents on that score.
8. Some hot food delivery services are made by bicycle, a relatively quiet and unobtrusive method. Some may be made by scooter or motorcycle. But Cardinal Place is already a precinct with numerous bars and restaurants in the Central Activities Zone where, as policy S1 of the Westminster City Plan November 2016 tells us, a mix of uses consistent with supporting its vitality, function and character will be promoted. Much of its servicing takes place from Palace Street, as I observed on my site visit. A motor cycle parking bay is one of the public facilities provided there which serves the whole precinct. The

proposal does not involve the introduction of a facility not already provided; it is suggested that it would use a facility already in existence. One may presume that it would not have been provided there if it was expected to give rise to unacceptable noise effects to nearby residents and so I do not consider that the marginally increased use of an existing facility by the proposal in this appeal would have an unacceptable effect on the living conditions of local residents.

9. There is objection from local residents on grounds of cooking smells. But cooking would take place in a restaurant with or without a takeaway service. Condition 13 of the original permission is intended to control the emission of cooking smells. There is no suggestion that this condition should not continue to apply.
10. Reference is made to Unitary Development Plan policy TACE8 in the council's reasons for refusal. That governs the development of restaurant facilities and so was correctly referred to in the original decision granting permission for the restaurant use. But UDP paragraph 8.81 makes it clear that policy TACE9 is the policy which governs take-away uses and dual uses comprising partly restaurant and partly takeaway as is proposed in this appeal.
11. I conclude that the proposal would have an acceptable effect on neighbouring residents. It would comply with Westminster City Plan policies S24, S29 and S32 which seek to ensure that new entertainment uses should not adversely impact on residential amenity amongst other matters and should minimise and contain noise and vibration. It would comply with UDP policies ENV6, ENV7, ENV13 and TACE9 which also seek to minimise and contain noise, to limit noise from internal activity and protect amenity.

P. W. Clark

Inspector