



Appeal Decision

Site visit made on 14 September 2020

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th September 2020

Appeal Ref: APP/V5570/W/19/3243073

137 Stroud Green Road, Islington, London, N4 3PX

- 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 Yuksel Irfan against the decision of the Council of the London Borough of Islington.
 - The application Ref: P2019/2532/FUL dated 15 August 2019, was refused by notice dated 1 November 2019.
 - The development proposed is change of use of the existing ground floor shop (A1) into a restaurant (A3) with a single storey rear extension.
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Decision

1. The appeal is allowed, and planning permission is granted for change of use of the existing ground floor shop (A1) into a restaurant (A3) with a single storey rear extension at 137 Stroud Green Road, Islington, London, N4 3PX in accordance with the terms of application Ref: P2019/2532/FUL dated 15 August 2019, subject to the conditions set out in the schedule attached.

Procedural Matter

2. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 amending the Town and Country Planning (Use Classes) Order 1987, amending the system of use classes. The amendments include the creation of a new Commercial, Business and Service use class (Class E). The new Class E incorporates previous use classes A1, A2, A3, B1, some of D1 and D2. The Council and appellant have been provided with an opportunity to comment on this matter.
3. During the determination of the application, the appellant submitted plans to amend the original scheme to (amongst other things) omit a proposed extractor flue on the side of the appeal site building. It is clear from the Council's delegated report and decision notice that they have determined the appeal on the basis of the amended scheme, and so shall I.

Main Issue

4. The main issue is the effect of the proposed development upon the vitality and viability of Finsbury Park Town Centre.

Reasons

5. The appeal site comprises a vacant retail unit together with a rear green space in a secondary frontage in Finsbury Park Town Centre. Policy DM4.4 of the Development Management Policies Local Plan (June 2013) (the DMPLP) explains the Council will seek to maintain and enhance the retail and service function of its town centres. Development is required to contribute positively to the vitality and viability of the centre and provide a variety of retail units. Policy 4.5 of the DMPLP requires within the secondary frontages the general retail (use class A1) character will be retained while permitting a limited number of non-retail units. Proposals to change the use of a retail premises will not be permitted unless all five of the listed policy criteria are satisfied.
6. The Council's most recent survey of this secondary frontage indicates only around 21% of the units are an A1 use and approximately 33% are in A3 use. The appellant's own survey suggests a significantly higher percentage of units are in an A1 use (61%). However, the appellant's classifications suggest other uses such as those in A2 use have been integrated into the 'retail' category. Based upon my visit the Council's survey is more reflective of the frontage and there is a shortfall in requirement to retain approximately 50% of the frontage as A1. Therefore, the proposal would not meet criterion i) of DM4.5.
7. At the time of my visit the unit immediately adjoining the south east of the appeal site was in an A2 use and the unit next to it was a sui generis use. Therefore, the proposal would result in a break of more than 2 non-retail units. Therefore, the proposal would conflict with criterion (ii) of DM4.5. Criterion (iii) requires a continuous vacancy and marketing period of 2 years. The unit has been vacant since June 2019 so it does not meet criterion iii). Therefore, the proposal does not meet the first three criteria of Policy DM4.5.
8. However, new Regulations amend the system of Use Classes to create a new broad 'Commercial, business and service' use class (Class E). This incorporates shops (Class A1), financial and professional services (Class A2), restaurants and cafés (Class A3), offices and other business uses (Class B1), some non-residential institutions e.g. nurseries and health centres (Class D1), and gymnasiums and sports facilities (Class D2) into a single use class. Therefore, the proposed change no longer constitutes a change of use or an act of development, so the retail use could be lost without planning permission.
9. The premises is of an adequate size that it could accommodate a restaurant without the proposed extension. Given this, the previous marketing and the nature of the appeal proposal, I am satisfied that there is a greater than theoretical possibility of the retail premises being replaced, even if this appeal were to fail. I give this fallback position considerable weight as a material consideration that outweighs the conflict with the development plan.
10. Criterion (iv) of DM4.5 requires a proposal does not have a harmful effect on the retail function and character of the Town Centre, and its vitality and viability. The increased floorspace from the proposed development would result in the site being able to accommodate further custom at busier times and create the potential for further employment opportunities. There is no substantive evidence the extension would be detrimental to the retail function. By increasing the amount of overall floorspace by a modest amount the extension may have the effect of increasing footfall, which may have a small

beneficial effect on the retail function and vitality and viability of the town centre.

11. Some A3 uses may have closed down and I note the anecdotal views in respect of competition between businesses. The evidence does not demonstrate that the extension would result in the closure of other businesses. The proposal would provide an active frontage and would be beneficial to the secondary frontage in this regard, complying with criterion v) of DM4.5.
12. For the reasons set out above, the proposal would result in a conflict with some of the criteria set out in Policies DM4.2, DM4.3, DM4.4 and DM4.5 of the DMPLP due to the loss of an A1 use, a concentration of A3 uses in a secondary frontage and their effect upon the vitality and viability of the retail function of Finsbury Park Town Centre. However, the change of use no longer constitutes an act of development so the retail use can be lost without the need for planning permission. The changes to the use classes order outweigh the conflict with the development plan. Having regard to the effects of the proposed increase in floor space, I find the development would not be harmful to the vitality and viability of Finsbury Park Town Centre.

Other Matters

13. The Stroud Green Conservation Area (SGCA) encompasses the appeal site and many buildings and plots on the south western side of Stroud Green Road. Special attention should be given to the desirability of preserving or enhancing the character or appearance of the SGCA under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. In this location the SGCA derives its significance from the linear plots with occasional mature trees, occupied by ground floor business spaces below matching pairs of three storey semi-detached buff brick buildings which have retained features such as their decorative corbelling and arched window openings.
14. To the rear many buildings including those the north west and some further to the south east of the appeal site have been extended with more modern ground floor extensions, many close to their plot boundaries. The appeal site retains some enclosed informal green space. Whilst I note the reference to a removed tree there is no substantive evidence that this or development to the rear of nearby plots is unlawful. The visibility of the green space is restricted by surrounding boundary fencing, buildings and nearby trees. It makes no discernible contribution to the significance of the SGCA.
15. The single storey flat roofed extension would be in keeping with and characteristic of a number of the premises to its north west and south east within the SCGA in terms of its height, depth, form, materials and use. It is of a height that an adequate internal height could be accommodated within the structure. The Council has suggested a condition to require the approval of extraction plant. There is no substantive evidence before me that an acceptable solution could not be found. Overall, the development would preserve the elements that make a positive contribution to the significance of the SGCA and it would preserve the character and appearance of the SGCA, and wider area.
16. Third party representations set out concerns in respect of the cumulative effect of noise and odour. The arrangements would require bins to be brought through the premises for collection. This would be the case with the current

premises and there is no evidence this would cause a problem. The conditions set out in respect of the use and storage of bins, noise and odour would ensure the development would not result in harmful living conditions in respect of noise and odour.

17. The extension would be in close proximity to neighbouring garden and premises boundaries. Given the width and depth of the neighbouring gardens and spaces, the limited height of the development, and backdrop of the historic buildings, the development would not result in harmful living conditions from being overbearing or a loss of outlook. The development would increase the amount of impermeable area on the plot. However, the Council did not set out concerns in respect of this matter and there is no substantive evidence to demonstrate that surface water drainage cannot be dealt with adequately by existing infrastructure.

Conditions

18. I have considered the list of suggested conditions provided by the Council in the context of the advice in the National Planning Policy Framework (2019) and Planning Practice Guidance. As well as the standard condition for commencement, for certainty a condition requiring the development to be carried out in accordance with the approved plans is necessary. I have omitted the reference to the Design & Access Statement and the Planning and Retail Statement as these conflict with or duplicate the application form, approved plans, and matters that are the subject of other planning conditions.
19. A condition to require the submission and approval of the extraction route is necessary to preserve the character and appearance of the Stroud Green Conservation Area and in the interests of the living conditions of occupiers of neighbouring properties. I have omitted the reference to a non-side facing extraction system, as the consideration of this is inherent in the condition.
20. In the interests of the living conditions of occupiers of nearby properties it is necessary to impose conditions to require the submission and approval of details of plant and extraction systems, as well as their noise levels and maintenance of their filter systems. For the same reasons it is also necessary to impose conditions to secure a scheme for the storage of refuse and to limit the times at which bottling out takes place.
21. The Council has recommended a planning condition to restrict the use to that of a shop or a restaurant. However, it is not demonstrated that the other uses in use class E would be harmful so as to justify withdrawing the right to use the premises as such. Therefore, the condition is not necessary or justified based upon the evidence before me.

Conclusion

22. For the reasons set out above, and having regard to all the matters raised, the appeal should be allowed, and planning permission is granted.

Dan Szymanski

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following plans and drawings: Location Plan, Proposed Block Plan and KL/1225-P1 Rev A.
- 3) Notwithstanding the plans hereby approved, the exact location of the extraction route shall be submitted to and approved in writing by the Local Planning Authority prior to the approved extension being operational. The details provided shall show the extraction route exiting the building. The scheme shall be implemented in accordance with the approved details prior to the approved extension being operational and shall thereafter be retained.
- 4) The design and installation of new items of fixed plant shall be such that when in operation the cumulative noise level LAeq Tr arising from the plant, when predicted and measured at 1m from the facade of the nearest noise sensitive premises, shall be a rating level of at least 5dB(A) below the background noise level LAF90 Tbg. The measurement and prediction of the noise shall be carried out in accordance with the methodology contained within BS 4142: 2014.
- 5) Prior to the extension being brought into use, a report shall have been submitted to and approved in writing by the Local Planning Authority by appropriately experienced and competent person, to assess the noise from proposed mechanical plant to demonstrate compliance with condition 4. The report shall include site measurements of the plant in-situ. Any noise mitigation measures required for compliance with condition 4 shall be installed before commencement of the use of the extension hereby permitted and shall be permanently retained thereafter.
- 6) Notwithstanding the approved plans, any flue or extraction system shall be fitted with fine filtration or Electrostatic Precipitation followed by carbon filtration (carbon filters rated with 0.4-0.8 second resistance time) or alternatively fine filtration followed by carbon filtration and by a counteractant/neutralising system to achieve the same level as above. The filter systems of the approved flue and extraction systems shall be regularly maintained and cleaned.
- 7) The development hereby permitted shall not be brought into use until details of refuse storage facilities and a refuse storage plan have been submitted to and approved in writing by the Local Planning Authority. The details shall include the location and design of the facilities and arrangement for the provision of the bins. The storage arrangements shall be implemented in accordance with the approved details prior to the extension being brought into use and shall thereafter be retained.
- 8) No bottling out at the premises shall occur between the hours of 10pm and 9am on all days of the week.

End of Schedule.