



Appeal Decision

Site visit made on 16 September 2020

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 October 2020

Appeal Ref: APP/H5960/W/20/3249640
216 Trinity Road, London SW17 7HP

- 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 Aldo Breda against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2019/5598, dated 20 December 2019, was refused by notice dated 13 March 2020.
 - The development proposed is removal of existing shopfront, installation of two windows and entrance door, erection of metal railings to front boundary, in connection with change of use of restaurant Class A3 to one three-bedroom flat (Class C3); demolition of rear outbuildings and extension of existing original pitch roof over the rear extension.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020. The Regulations amend the Use Classes Order and provides for new use classes. Class E (Commercial, Business and Service) subsumes previous use classes specified in the Schedule to the Use Classes Order including Class A3 (restaurants). The proposal therefore now involves a change of use from Class E to Class C3.

Main Issue

3. The main issue is whether the change of use is acceptable having regard to development plan policies and to other material considerations.

Reasons

4. The appeal relates to a vacant ground floor shop unit last used as a restaurant. The unit is part of a three storey semi-detached building paired with 214 Trinity Road. The upper floors to both buildings are in residential use. The ground floor at no.214 is in use as a restaurant and there is another restaurant to the other side of the appeal site at 218 Trinity Road. The surrounding area is mixed in character including a children's nursery, a church, ground floor residential units and shop units.
5. The site is within the Bellevue Road Local Centre but beyond any designated primary or secondary shopping frontages. Policy DMTS5 of the Wandsworth Development Management Policies Document (2016) (DMP) relates to site in 'other frontages' such as the appeal site. It states that "*proposals involving*

ground floor units in other frontages will be permitted if (a) the proposed use is an appropriate town centre use as defined in the glossary; (b) a shopfront is retained/provided". The glossary within the DMP defines town centre uses as "A1-5 (retail), B1a (offices), C1 (hotels), D1 (non-residential institutions), D2 (assembly and leisure, including intensive indoor sport and recreation), and appropriate Sui Generis uses".

6. The proposed residential use is not included within this definition. The proposal would thereby be contrary to Policy DMTS5. The policy is part of a recently adopted development plan. Paragraph 2 of the National Planning Policy Framework (the Framework) states "*Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise*"¹.

Other considerations

7. The provision of an additional dwelling with a satisfactory layout in a sustainable location would be a benefit that needs to be weighed against these policy considerations. The proposal would accord with local, London wide and national planning policies that seek to boost the supply of homes. The Council has submitted information to confirm that it is currently meeting its housing targets; the tilted balance at Paragraph 11(d) of the Framework therefore does not apply.
8. The appellant has supplied documents confirming repeated failures of attempts to establish a restaurant or café at the site and contends that these uses are not viable in this location. However, the site is between two other restaurants which would appear to be viable concerns. There are several other restaurants of varying sizes nearby, the proximity and cumulative provision of which may impact demand for another restaurant. But Policy DMTS5 does not seek to restrict occupation to just restaurant use, for which there may be limited demand, but is supportive of other listed town centre uses.
9. The appellant contends that there are plenty of shop and commercial units available generally and that with businesses moving online in the current 'post-pandemic' economic circumstances that there would not be demand for the unit as an alternative town centre use. However, there is no evidence before me that the property had been marketed for other appropriate town centre uses prior to submission of the appeal proposal. The 'post-pandemic' economic circumstances are certainly challenging for town centre uses, but these difficulties may be temporary, and alone would not override the primacy of the development plan. Moreover, the recent introduction of Class E (Commercial, Business and Service) would facilitate changes to several other town centre uses without first requiring a change of use.
10. Paragraph 85 of the Framework states "*Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation*". Policy DMTS5 is broadly consistent with this aim. Supporting paragraph 4.24 comments that 'Other Frontages' provide uses complementary to the shopping function of the core and secondary frontages, often at more affordable rents, which contribute to overall vitality and viability of centres.

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

11. The 'Other Frontage' including the appeal site is listed as 202-224 Trinity Road. This includes several residential properties, a use that is excluded from the definition of appropriate town centre uses in Policy DMTS5. However, the pattern of development along this part of Trinity Road shows that residential and commercial uses appear in clusters. To the north of the site, 220-224 Trinity Road is a building of flats of relatively recent construction. To the south of the site and St. Mary Magdalene Church is a parade of shop units. There is a more interspersed residential and commercial character to the south of the junction with Nottingham Road, but this is beyond the defined extent of the 'Other Frontage'. The appeal site occupies a central position within a cluster of three shop units. The only other residential uses along the frontage are either purpose built flats or on upper floors.
12. The retention of the shopfront as part of the requirements of Policy DMTS5 would facilitate the introduction of an alternative 'town centre use' and would be in keeping with the appearance of adjacent premises.
13. The site is located within the Wandsworth Common Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, with respect to any buildings or other land in a conservation area, when considering whether planning permission should be granted, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area. The existing shopfront is not of historic significance. The Council considers the replacement windows, entrance door and railings would preserve the character of the conservation area but would nonetheless be contrary to Policy DMTS5 which requires retention of the shopfront. I have no reason to disagree with this judgement.

Planning balance

14. The proposal would be contrary to adopted development plan policy DMTS5 on appropriate uses within this part of Trinity Road. Set against this would be the benefit of provision of an additional dwelling in a sustainable location. However, notwithstanding recent difficulties in establishing a successful restaurant use, it has not been established that the unit could not be occupied by an alternative town centre use in accordance with policy DMTS5. The benefit of one additional dwelling does not outweigh the conflict with this policy and the harm that would arise to the vitality and viability of the Bellevue Road Local Centre if the loss of appropriate town centre uses to residential were to be repeated at other sites.

Conclusion

15. The change of use to a dwelling would not be appropriate having regard to development plan policies and to other material considerations. For the reasons given the appeal is dismissed.

Rory MacLeod

INSPECTOR