



Appeal Decision

Site visit made on 6 October 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th October 2020

Appeal Ref: APP/V5570/W/20/3248006

234 Holloway Road, Islington, London N7 8DA

- 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 Gunay Demir against the decision of the Council of the London Borough of Islington.
 - The application Ref P2019/2982/FUL, dated 23 September 2019, was refused by notice dated 14 January 2020.
 - The development proposed is described as 'change of use from Sandwich Bar (A1 Use) to Cafe/Restaurant (A3 Use) with installation of extraction flue system at the rear. External and internal improvements to be done to the property with a good standard of work'.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from sandwich bar (Use A1) to cafe/restaurant (Use A3), installation of extraction flue system at the rear and alterations to side elevation to ground floor unit in accordance with the terms of the application, Ref P2019/2982/FUL dated 23 September 2019, subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Mr Gunay Demir against the Council of the London Borough of Islington. This application is the subject of a separate Decision.

Procedural Matters

3. At my visit, I noted an extract flue present on the appeal site, but its design did not appear to be wholly consistent with the proposal before me. For the avoidance of doubt, I have determined the appeal on the basis of the development shown on the submitted plans
4. The description of development in the banner heading above is taken from the application form. However, the Council altered the description to 'change of use from sandwich bar (Use A1) to cafe/restaurant (Use A3), installation of extraction flue system at the rear and alterations to side elevation to ground floor unit'. This provides a more accurate and succinct account of the proposal, and as it is also the description entered by the appellant at section E of the appeal form I have used it in my formal decision.
5. Following the submission of the appeal, the Town and Country Planning (Use Classes) (Amendment)(England) Regulations 2020 ('the Amendment Regulations') came into force on 1 September 2020 and amend the Town and Country Planning (Use Classes) Order 1987. Because the appeal application was made before 1 September 2020, Regulation 4 of the Amendment Regulations

provides that it is to be determined by reference to uses or use classes specified in the Schedule to the Use Classes Order as at 31st August 2020. Nevertheless, I have had regard to comments submitted by the main parties on the relevance of the Amendment Regulations to the proposal.

Main Issues

6. The main issues are:

- i) the effect of the proposal on the retail function, vitality and viability of the Lower Holloway Local Shopping Area; and
- ii) the effect of the proposal on the character and appearance of the host building and the St Mary Magdalene Conservation Area.

Reasons

Local Shopping Area

7. The appeal relates to a ground floor unit which was last in retail (Class A1) use as a sandwich bar. The site is part of the Lower Holloway Local Shopping Area (LSA) as defined within Islington's Local Plan: Development Management Policies 2013 (DMP).
8. Within LSAs, Policy DM4.6 of the DMP protects ground floor retail units from change of use unless certain criteria are met, including that the vitality, viability and predominantly retail function of the area would not be adversely affected. Marketing evidence to demonstrate that the unit has been continuously vacant for at least 2 years and that there is no realistic prospect of it being retained in its current use for the foreseeable future is also required.
9. Irrespective of the lawful uses of the premises at 228, 230 and 234 Holloway Road, my impression was that a fairly low proportion of units across the LSA were in retail use, and I noted particularly a significant number of restaurants and takeaways. The loss of the retail use from the appeal site would increase the imbalance and further diminish the retail function of the LSA to the detriment of its vitality and viability overall.
10. The appellant's marketing information shows the site was vacant for a fairly long period from March 2017 until a completed property transaction in January 2019 and that the unit was then occupied, albeit only partly, in April 2019. Although the appellant advises this use ceased in August 2019, no substantive details have been provided of any subsequent marketing of the site. Notwithstanding the overall period of vacancy and that occupation was only partial, the evidence before me does not show that the unit was vacant for a continuous period of at least 2 years prior to the application being submitted. There is also no clear evidence that investment required means future retail use of the site would be unviable. I am not therefore satisfied that the submitted evidence suitably demonstrates that the retail unit is no longer required in accordance with the stipulations of DMP Policy DM4.6, nor that it could not viably be used for retail in future.
11. I therefore find that the proposal would harm the retail function, vitality and viability of the Lower Holloway LSA in conflict with Policy CS14 of Islington's Core Strategy 2011 (CS) and DMP Policies DM4.1, DM4.2, DM4.3 and DM4.6. Amongst other things, these policies broadly seek a healthy retail and service economy and to maintain the vitality, viability and function of LSAs.

12. However, the Amendment Regulations create a new broad '*Commercial, business and service*' use class (Class E) which incorporates previous use classes including shops (Class A1), financial and professional services (Class A2), restaurants and cafés (Class A3) and offices and other business uses (Class B1) into a single use class. As a result, the proposed change of use would no longer constitute an act of development, and the retail use of the appeal site could be lost without the need for planning permission. This represents a significant fallback, and I am satisfied that there is a greater than theoretical possibility that the appellant would implement this fallback option in the event that the appeal were to fail.
13. I therefore give this fallback position substantial weight, and I find that it is a material consideration which outweighs the conflict with the development plan in this case.

Character and Appearance

14. The proposed extraction flue would emerge from the roof of the single-storey rear part of the appeal building and would run along the rear and top of the first-floor level to terminate above the height of the roof of the three-storey front section of the building. The appeal site is within the St Mary Magdalene Conservation Area (CA), and the flue would be visible from Hornsey Road to the side and rear of the building, as well as from neighbouring buildings.
15. The St Mary Magdalene Conservation Area Design Guidelines (CADG) and the Council's Urban Design Guide Supplementary Planning Document 2017 (SPD) advise that commercial extraction equipment should not generally discharge above the highest point of the roof, or be visible from public views. Be that as it may, while useful, the guidance is just that.
16. The top of the flue would be of comparable height to the adjacent chimney pots. Its upper section would be tucked against the chimney stack which projects to the rear of the first floor level of the building and the deeper attached stack of the neighbouring building, further limiting the prominence and visual impact of the development on both the host building and wider area. In addition, I observed varied extraction equipment visible to the rear of the neighbouring buildings within the terrace, including some of similar height. The development would be seen together with these existing examples, and as a result would not be out of keeping or jarring. For these reasons, I find that the extract flue would not in this case detract from the character or the appearance of the building or area, outweighing the guidance within the SPD and CADG.
17. It is also proposed to alter the external materials of the building and to replace the roof and windows and doors to the side of the rear single-storey section. The new windows and door would be in place of an existing window in poor condition and a roller shutter which detract somewhat from the appearance of the building and the street scene of Hornsey Road. They would be of greater width than the existing openings, but would reflect the appearance of the existing glazing to the front part of the building. The single-storey height of this section of the building would also ensure it remained subordinate overall and did not compete with the main Holloway Road frontage which is three-storey. The replacement roof would reflect the height and profile of the existing roof, and subject to the use of appropriate materials which can be secured by condition, I am satisfied that the alterations would maintain the appearance and architectural integrity of the host building overall.

18. Taking all of these factors into account, the development would sit comfortably within its surroundings. I find that the character and the appearance of the CA would be preserved as sought by the statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, and its significance would not be harmed.
19. I therefore conclude on this main issue that the proposal would accord with Policies CS9 of the CS, Policies DM2.1 and DM2.3 of the DMP and Policies 7.4, 7.6 and 7.8 of the London Plan - The Spatial Development Strategy for London Consolidated with Alterations Since 2011. Amongst other things, these policies seek high quality design that protects local distinctiveness and the character of an area, including through conservation and enhancement of heritage assets.

Conditions and Conclusion

20. I have considered the Council's suggested conditions with regard to the tests outlined at paragraph 55 of the National Planning Policy Framework. Where necessary, I have amended them for the sake of clarity and precision.
21. In addition to the standard time limit condition, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interests of certainty. A condition to control external materials is necessary in the interests of the character and appearance of the area. To safeguard the living conditions of neighbouring occupiers, measures to control noise and vibration and opening hours of the unit are necessary, although I have altered the Council's suggested conditions to avoid duplication and ensure that they are enforceable and sufficiently precise. The appellant has not opposed the opening hours put forward by the Council, but while noise and activity late at night could harm neighbouring residents' living conditions, given the location of the site within a mixed area and the nearby commercial uses at ground floor level I see no reason to restrict opening until 1130. I have therefore substituted 0900 as originally applied for by the appellant.
22. The Council's report on the application refers to a condition to seek details of waste management. This was not suggested at appeal stage, but in any event, I do not consider that such a condition would be necessary given the existing commercial use and provision for storage of waste within the building.
23. With regard to the Amendment Regulations which incorporate a variety of uses under Class E, the Council proposes that use of the site should be limited to retail, financial and professional services or café/restaurant uses. I am mindful that the Planning Practice Guidance advises that conditions restricting the future exercise of permitted development rights or changes of use may not pass the test of reasonableness or necessity. No substantive evidence has been provided to demonstrate how harm would result from use as a clinic, health centre, nursery/crèche, day centre, gymnasium or any other form of indoor recreation, and given the mixed nature of the area around the appeal site I see no reason this would be necessary. I have not therefore imposed this condition.

Conclusion

24. For the reasons given above, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

Schedule of 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: Location Plan, Block Plan, 01, 02, 03, 04, 05, 06, 07 and 08.
- 3) The development shall be constructed in accordance with the materials noted on the approved plans and shall be maintained as such thereafter.
- 4) The design and installation of new items of fixed plant shall be such that when operating the cumulative noise level $L_{Aeq Tr}$ arising from the proposed plant, measured or predicted 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 $L_{AF90 Tbg}$. The measurement and/or prediction of the noise should be carried out in accordance with the methodology contained within BS 4142: 2014.
- 5) The development shall not be occupied until a report by an appropriately experienced and competent person to assess the noise from the proposed mechanical plant to demonstrate compliance with condition 4, including site measurements of the plant in situ, has been submitted to and approved in writing by the Local Planning Authority.
- 6) The development shall not be occupied until full particulars and details of a scheme for sound insulation between the proposed ground floor A3 use and upper floors of the building has been submitted to and approved in writing by the Local Planning Authority. The sound insulation measures shall be carried out strictly in accordance with the approved details prior to the first occupation of the development hereby approved, and shall be maintained as such thereafter.
- 7) All plant and equipment shall be supported on adequate proprietary anti-vibration mounts as necessary to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises, and these shall be so maintained thereafter. If at any time the plant is unable to comply with this condition, it shall be switched off and not used again until it is able to comply.
- 8) The use of the ground floor unit hereby permitted shall only take place between the hours 0900 – 2200.

End of Schedule