



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: 13th October 2020

Appeal Ref: APP/X5210/W/19/3243869

L'Amentine 6 Camden Road, London NW1 9DL

- 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 Soleman Alhamamda against the decision of the Council of the London Borough of Camden.
 - The application Ref 2019/2744/P, dated 25 May 2019, was refused by notice dated 23 September 2019.
 - The development proposed is described as 'change of use A1 licence to A5'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the application form. Nevertheless, the Council altered the description of application 2019/2744/P to read 'change of use from sandwich bar (Use Class A1) to hot food takeaway (Use Class A5)'. This is also the description used by the appellant on the appeal form. I consider this to be a more accurate description of the proposals and I have therefore considered the appeal on this basis.
3. The main parties were given an opportunity to comment on the Town and Country Planning (Use Classes)(Amendment)(England) Regulations 2020 which came into force on 1 September 2020 and amend the Town and Country Planning (Use Classes) Order 1987. I have determined the appeal in light of the comments received, and Regulation 4 of the Amendment Regulations which provides that an application submitted prior to 1 September 2020 referring to uses or use classes specified in the Schedule to the Use Classes Order as at 31 August 2020 should be determined by reference to those uses or use classes.

Main Issues

4. The main issues are:
 - i) the effect of the proposal on the retail function, vitality and viability of the Camden Town Centre;
 - ii) the effect of the proposal on the living conditions of the occupiers of neighbouring dwellings with particular regard to noise and odour; and
 - iii) the effect of the proposal on the health of the local community.

Reasons

Town Centre

5. The appeal relates to a ground floor unit which is currently in use as a sandwich bar. The Council initially suggested that the site was part of the primary frontage of the Camden Town centre as defined within the Camden Local Plan 2017 (CLP), but has since confirmed that it is part of a secondary frontage.
6. Policies TC2 and TC4 of the CLP seek to maintain the character, function, vitality and viability of centres within the borough and advise that secondary frontages will be protected as locations for shops (Use Class A1) together with a broader range of other town centre uses. More detailed expectations for the balance of uses within different frontages are set out at Appendix 4 of the CLP and seek a minimum proportion of 50% A1 shops in individual secondary frontages within Camden Town.
7. The secondary frontage which includes the appeal site is made up of 6 units, of which only 2 are in use as A1 shops. While the appellant suggests that activity would not be significantly different from the existing sandwich bar, the proposal would result in the loss of the Use Class A1 retail unit from the site, further reducing the proportion of shop units to well below the 50% sought by the CLP. I do not dispute that a mix of uses can add to the vitality and viability of an area overall, but I find that the very low remaining proportion of A1 use would be detrimental to the retail function of the secondary frontage and the provision of a balance of uses. This would be harmful to the vitality and viability of the centre, and would conflict with CLP Policies TC2 and TC4.
8. The Camden Planning Guidance Town Centres and Retail 2018 points to a low level of vacancy and strong demand for retail space within Camden Town. Furthermore, the unit is currently in use, and I have not been provided with any substantive evidence that there is no demand or need for retail space on the site. Given this, I am not persuaded that the proposal is necessary to support the vitality or viability of the area.
9. The National Planning Policy Framework (the Framework) gives significant weight to the need to support economic growth and productivity and supports the creation of conditions in which businesses can invest, expand and adapt. However, this is alongside requirements to ensure the vitality of town centres, including through making clear the uses that should be permitted in town centres and primary shopping areas. While this iteration of the Framework no longer refers specifically to primary and secondary frontages, it states that primary shopping areas are defined areas where retail development is concentrated. I see no reason this would exclude locally-designated secondary frontages, and I find no inherent conflict between the Framework and the protection for such frontages within CLP Policies TC2 and TC4. In any case, the appeal site is also within a town centre.
10. For these reasons, I conclude on this main issue that the proposal would be harmful to the retail function, vitality and viability of the Camden Town Centre, and it would conflict with CLP Policies TC2 and TC4.

Living Conditions

11. The appeal site is part of a building which is in mixed uses, including residential uses at the upper levels. The proposed opening hours would not be inconsistent

- with other nearby premises, and in that regard, activity associated with the use may not be unusual so as to harm the living conditions of nearby residents.
12. However, no assessment of odour associated with cooking on the premises, or details of any system of ventilation or extraction equipment which would have the potential to result in noise have been provided. In the absence of this information, I cannot be sure that noise and odour emanating from the site would not cause unacceptable harm to the living conditions of nearby occupiers.
 13. The appellant suggests that an extraction system could be installed, and that details of this and soundproofing to premises could be secured through a planning condition, and I note that the Council's suggested conditions include a scheme for ventilation. Nevertheless, from the information before me it seems likely given the relationship of the property with adjoining buildings that any external extraction would need to be provided to the front of the building along Camden Road or to the side along Bayham Street. As I do not know the nature of equipment which may be necessary to mitigate odour and associated noise effects, I have significant concerns that such an arrangement could detract from the character and appearance of the building which is in a prominent location within the Camden Town Conservation Area. Together with the potentially significant adverse effects of the proposal in the absence of suitable mitigation, I do not therefore consider that it would be appropriate in this case to defer consideration of this matter for later resolution by means of a condition.
 14. I am not therefore satisfied that the proposal would not cause unacceptable harm to the living conditions of neighbouring occupiers with particular regard to noise and odour. Accordingly, I conclude on this main issue that the proposal would conflict with Policies A1, A4, TC2 and TC4 of the CLP which together broadly seek to protect quality of life for residents and avoid unacceptable impacts, including from noise or fumes.

Health

15. The Framework seeks support for healthy communities and lifestyles, and the creation of places which promote health and wellbeing. Policy TC4 of the CLP also outlines that the health impacts of development for town centre uses will be considered. Against these objectives, the Council asserts that the proposal could threaten public health by promoting obesity in a high risk area suffering from deprivation. However, there is no substantive evidence before me of the health needs or inequalities relevant to the local community demonstrating a particular concern in this area.
16. I note that the site is within 400m walking distance of the Cavendish School. The proposal would therefore conflict with Policy E9 of the emerging London Plan which sets out that proposals containing hot food takeaways should not be permitted within 400m walking distance of the entrances or exits of existing or proposed primary or secondary schools. The emerging London Plan is at an advanced stage, but it is yet to be adopted. It is therefore subject to change, and I have also not been made aware of the extent to which there are any unresolved objections to Policy E9. With regard to paragraph 48 of the Framework, this limits the weight that I attach to Policy E9.
17. Moreover, although it is within fairly close proximity of the Cavendish School, the site is located beyond Camden High Street and Kentish Town Road which are busy roads and I note that the appellant has also referred to the School's

policy that children are dropped off and collected by parents or carers. The site is part of an existing town centre with a broad mix of uses, and while I accept that it is not a hot food takeaway, the existing sandwich bar nevertheless offers food for sale from the premises. Against this context, I have not been provided with evidence of a significant concentration of hot food takeaways locally which would be harmfully exacerbated. Nor has the Council provided compelling evidence to demonstrate how the proposal would lead to a significant impact on the health of either pupils of the school or the wider community.

18. In conclusion on this main issue, the evidence before me does not demonstrate that the proposal would cause unacceptable harm to the health of the local community, and I therefore find no conflict with CLP Policy TC4 or the support for improving health within Policy E9 of the emerging London Plan.

Conclusion

19. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR