



Appeal Decision

Site visit made on 29 September 2020 by Thomas Courtney BA(Hons) MA

Decision by Andrew Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2020

Appeal Ref: APP/Q5300/W/19/3243618

156 Percival Road, Enfield, EN1 1QU

- 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 Payam Ezad Panah (Shaolin Temple Cultural Centre) against the decision of the London Borough of Enfield Council.
 - The application Ref 19/02746/FUL, dated 2 August 2019, was refused by notice dated 27 September 2019.
 - The development proposed is the change of use from A2 office to D2 Taichi, Qigong and self-defence studio.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from A2 office to D2 Taichi, Qigong and self-defence studio at 156 Percival Road, Enfield, EN1 1QU, in accordance with the terms of application Ref 19/02746/FUL, dated 2 August 2019 and subject to the following conditions:
 - 1) The development hereby permitted shall begin no later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos. PERC/2019/01, PERC/2019/02 and PERC/2019/03.
 - 3) The development hereby approved shall not commence until a scheme for protecting the amenity of nearby residential units from noise from the development shall have been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before the development commences and shall be retained thereafter.
 - 4) Customers shall only be permitted on the premises between the following hours: 1700 – 2030 Mondays – Fridays, 0900 - 1300 Saturdays and not at all on Sundays. All activity associated with the use shall cease within 1 hour of the closing times specified.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.
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Main Issues

3. The main issues are:

- the effect of the development on the viability of the local parade and;
- the effect of the development on the living conditions of the occupiers of the first-floor flats of No.156, with particular regard to noise.

Reasons for the Recommendation

Viability of parade

4. The appeal site accommodates a vacant shop unit located on the eastern side of Percival Road in close proximity to the junction with Lincoln Road. Residential units occupy the upper floors of the host building. The unit forms part of a parade of shops which forms the local centre for the immediate area.
5. Policy DMD28 of Enfield's Development Management Document (the 'local plan') identifies the importance of local centres remaining viable to ensure the day to-day convenience retail needs of local residents are met. To guarantee the viability of a centre, the policy requires that these local centres and parades remain predominantly retail A1, whilst a proportion of other non-retail uses falling within retail use classes and community uses play a complementary role.
6. I note the parties differ in their classification of the existing use of the unit with the Council maintaining the last known use was a hot food takeaway (use class A5) whilst the appellant states that a lawful development certificate was granted for the change of use from a hot food takeaway to financial and professional services office (use class A2). For the purpose of this appeal, this difference in opinion has little bearing in terms of my assessment of the proposal given Policy DMD28 refers to all A use classes and then, separately, a loss of A1 Uses.
7. The first part of Policy DMD28 resists the loss of all A class, leisure or community uses. The proposal would be a leisure use, so would not conflict with this part of the policy.
8. The policy goes on to state that the proportion of A1 shop units must be no less than 50% of the total number of commercial units within any one parade. The Council asserts that as a result of the change of use less than 50% (43.75%) of the units along the parade would be in A1 use therefore meaning that the proposal would fail to ensure the role and function of the local parade would remain predominantly retail. This assessment was supported by the provision of a table detailing the use class of each unit. However, as neither of the suggested existing uses are A1, the proposal would not result in a loss of A1. The Council acknowledge this in the officer's report, but go on to suggest that in such circumstances any change of use should be back to A1. This is not supported by the policy.
9. Moreover, the appellant also states that although the neighbouring unit at No. 154 obtained approval for a change of use from an A1 use to form a fitness and dance studio (D2) in 2018, this has not been implemented. On my site visit I did indeed observe that No.154 is currently vacant and the appellant has provided evidence it is currently being advertised as an A1 unit. Were it to be

let as an A1 unit, or were the 2018 planning permission not implemented, the proportion of A1 uses would be 50%.

10. In addition, I find that the proposed use of the unit would fulfil a complementary role to the parade. There is currently only one other D2 use in the parade and hence the proposal would provide a suitably subservient complementary role in the local centre.
11. Although no evidence of marketing for a retail use was submitted by the appellant, given the above, I find the proposal would not harm the viability of the local parade or result in excessive D2 uses. The development would thus accord with Policy DMD28 of the local plan whose aims were referred to earlier, as well as Policies CP17 & CP18 of the Enfield Core Strategy (the 'Core Strategy') and Policies 4.7 and 4.8 of the London Plan which together seek to ensure proposals enhance the vitality and viability of local commercial centres.

Living Conditions

12. The proposal has not provided details of mitigation to address the impact of noise arising from the proposed activity on the residents above. However, the appellant asserts that only 10 customers would be on site at any one time which, given the small size of the space, seems likely. Also, Taichi and Qigong are not usually noisy activities, and the proposal would not run on long into the evening. At such it is unlikely that the proposal would be excessively noisy. Notwithstanding this, I find any noise impacts can be addressed by way of a condition requiring the submission of a scheme to ensure the risk of noise pollution is sufficiently mitigated to avoid adverse impacts on the living conditions of the occupiers of adjoining and nearby residential properties.
13. The development would thus accord with the aims of Policy DMD28 of the local plan which seeks to ensure proposals involving a change of use from retail to non-retail on the ground floor do not result in an adverse impact on the amenities of nearby occupiers, and Policy DMD68 of the local plan which seeks to ensure developments do not generate an unacceptable level of noise. I do not find that Policy CP32 of the Core Strategy is directly relevant to the proposal as it relates to food and drink establishments.

Conditions

14. The Council has suggested a number of conditions that it would wish to see imposed in the event that the appeal was successful. I have considered the suggested conditions against the advice on conditions set out in the Framework and the Planning Practice Guidance.
15. I have imposed the standard conditions relating to the commencement of development and specifying the relevant plans in order to provide certainty. I have not found it necessary to impose the suggested condition restricting external changes to the appearance of the building as any such changes would require planning permission and so are already within the Council's control.
16. I have imposed a condition requiring the submission of a scheme to ensure noise generated by the proposed use does not harm the living conditions of adjoining occupiers. However, the Council also suggested a condition requiring insulation from externally generated sound, but as the proposed use is not noise sensitive I see no need for this condition.

17. I have also not imposed the suggested condition relating to the sale of food and drink for consumption off the premises as there is no reason or evidence before me to suggest this is an eventuality.
18. The Council suggested a condition specifying opening hours should be limited to between 08.00 and 20.00. However, the appellant wishes to open between 1700 – 2030 Monday to Friday, 0900 to 13.00 on Saturdays and not at all on Sundays. This does not seem unreasonable. I have therefore imposed a condition to reflect this, in the interests of protect the living conditions of neighbouring occupiers.

Recommendation

19. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be allowed.

Thomas Courtney

APPEAL PLANNING OFFICER

Inspector's Decision

20. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is allowed.

Andrew Owen

INSPECTOR