



Appeal Decision

Site visit made on 22 October 2020

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th November 2020

Appeal Ref: APP/C5690/W/20/3257267

Ground Floor, 305 Stanstead Road, Catford, London SE23 1JB

- 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 J Gutstein (Tangier Estates Ltd) against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/20/116134, dated 12 March 2020, was refused by notice dated 3 August 2020.
 - The development is described as "change of use to extend shop".
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Decision

1. The appeal is allowed and planning permission is granted for a change of use to extend shop at Ground Floor, 305 Stanstead Road, Catford, London SE23 1JB in accordance with the terms of application, Ref: DC/20/116134, dated 12 March 2020, subject to the schedule of conditions attached to this decision.

Procedural Matters

2. The text within the 'site address' and 'description of development' fields of the planning application form contain typographical errors. In the interests of precision, I have corrected the typographical errors within the banner heading above and my formal decision.
3. The appellant submitted amended plans part way through the determination of the planning application. For the avoidance of doubt, I have determined this appeal on the basis of the amended plans¹.
4. The Council contend that an existing basement and lightwell at the appeal site, which are shown on the submitted floor plans, do not benefit from planning permission. Whilst this may or may not be the case, such works fall outside of the scope of the planning application, which relates solely to the ground floor extension at the rear of the building. The scope of the proposed works is clearly explained within the Design, Access and Planning Statement that was submitted with the planning application. For the avoidance of doubt, I have determined this appeal on that basis.
5. I have been appointed to determine two appeals on this site. The other appeal reference is APP/C5690/W/20/3254272. I have considered each proposal on its individual merits and prepared separate decision letters.

¹ Drawing no: 305SR-C-02 Rev D

6. The Council's statement refers to the Draft London Plan (the 'DLP') and states that 'some weight' may be given to the DLP as a material consideration. In accordance with paragraph 48 of the National Planning Policy Framework (the 'Framework'), weight may be given to policies within emerging plans. The weight given is determined by the stage of preparation of the emerging plan, the extent of unresolved objections and the degree of consistency of the relevant policies to the Framework. I have been provided with no relevant policies from the DLP, nor have I been provided with any substantive details of the status of this emerging plan. Consequently, I attribute the plan and policies very limited weight as a material planning consideration.
7. The appellant has submitted additional floor plans² with the appeal. Whilst I acknowledge that the documents do not seek to evolve the original proposal, it is important that I determine this appeal on the basis of what was considered by the local planning authority, and on which interested people's views were sought. Therefore, I have not had regard to the plans as part of the determination of this appeal.
8. The appellant has submitted a location plan with the appeal. As the submitted plan does not evolve the scheme, and the nature of the concerns of those who would normally have been consulted are clear from consultation on the original set of plans, I do not consider that their interests would be prejudiced if I determine the appeal in accordance with this plan. For the avoidance of doubt, I have had regard to the location plan in the determination of this appeal.

Legislative Changes

9. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the 'UC Regulations') came into force, amending the Town and Country Planning (Use Classes) Order 1987 (the 'UCO'). These Regulations amend and simplify the system of Use Classes.
10. The amendments to the UCO revoke Class A (shops) and Class D (non-residential institutions and assembly & leisure) and create a new 'Commercial, business and service' use class (Class E) which incorporates the previous shops (A1), financial and professional services (A2), restaurants and cafes (A3) and offices and other business uses (B1) use classes. Uses such as gyms, nurseries and health centres (previously in use classes D1 Non-residential institutions and D2 Assembly and leisure) are also within Class E. It also includes "any other services which it is appropriate to provide in a commercial, business or service locality."
11. Paragraph 4 of the UC Regulations provides that: "If prior to the commencement of the material period, a relevant planning application was submitted, or was deemed to be submitted, to the local planning authority which referred to uses or use classes which applied in relation to England and were specified in the Schedule to the Use Classes Order on 31st August 2020, that application must be determined by reference to those uses or use classes".
12. In this instance, the application was submitted to the local planning authority before 1 September 2020. Therefore, I must determine this appeal with reference to the use classes which applied in relation to England and were specified in the Schedule to the Use Classes Order on 31st August 2020.

² Drawing nos: 305SR-BC-02a Rev D and SR.305.S

Background

13. The appeal property is a three-storey building which comprises of a ground floor retail unit and three self-contained flats. Planning permission³ was granted by the Council in March 2014 for the retention of the retail unit, a rear extension, external alterations and the change of use of the property to provide two self-contained flats on the upper floors. The approved extension was supported by posts at the rear of the building with a void space below the first floor for use by occupants of the flats.
14. However, the development as built includes a ground floor extension, which infills the void space, and has enabled the creation of an additional self-contained flat at the appeal property. The creation of the self-contained flat has also resulted in a reduction in the size of the retail unit when compared to the approved plans.
15. The Council issued an enforcement notice on 11 October 2018 for a breach of planning control, which alleged that the ground floor extension and the additional ground floor flat did not have planning permission. The enforcement notice was upheld at appeal⁴ by an Inspector on 28 November 2019 with a variation to the requirements of the notice, which required the residential use of the ground floor to cease and for the development to be altered so that it accords with the original planning permission. In addition to above, the Inspector refused planning permission on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990.
16. At my site visit, the unlawful ground floor extension remained in situ and the ground floor of the property comprised of a commercial unit and a self-contained flat.

Main Issue

17. The main issue is whether the development adheres to the Council's strategy to protect the functionality and viability of local shopping facilities, in the context of adopted policy.

Reasons

18. The appeal site is located within a local shopping parade on the northern side of Stanstead Road. The local shopping parade comprises of a variety of commercial uses including retail, hot food takeaways, restaurants/cafes and a public house.
19. Policy 6 of the Lewisham Local Development Framework: Core Strategy (the 'CS') establishes the Council's retail hierarchy and provides a policy framework for maintaining, managing and enhancing local and neighbourhood shopping within the Borough.
20. Criterion 2c of Policy 6 states that the Council will protect local shopping facilities from change of use or redevelopment where there is an economic demand for such services; in neighbourhood local centres and parades, change of use and contradiction of the shopping facilities will be considered if evidence is established that there is no economic prospect of such uses continuing.

³ Council Ref: DC/13/084142

⁴ PINS Ref: APP/C5690/C/18/3217341

21. DM Policy 16 of the Lewisham Local Development Framework: Development Management Local Plan (the 'LP') requires the retention of Class A1 shops located in a local shopping parade or operated as a corner shop, in order to preserve or enhance the local character and support the provision of essential daily goods and services, unless specified criteria are met.
22. The proposed development would retain the existing ground floor extension and incorporate the floor space into the existing shop unit. To facilitate the proposed change of use, the proposed floor plan shows that part of the wall which currently divides the existing shop and self-contained flat would be demolished. Moreover, the existing kitchen and shower facilities within the self-contained flat would be removed.
23. The Council have expressed concern about the retention of the subdividing wall and the lack of detail shown on the proposed floorplans about how the extended shop unit would be used. Consequently, the Council contend that the appellant has failed to demonstrate that the layout of the commercial unit would be usable, of viable proportions and meet the retail demand in the area and prevent the loss of a retail unit.
24. Whilst I recognise that part of the existing dividing wall would be retained, the proposed floor plans show that an opening would be created to form an enlarged retail unit on the ground floor of the appeal property. Consequently, I am not persuaded that the proposed layout of the ground floor could not function as a viable retail unit.
25. Moreover, whilst the proposed floor plans do not specify how the different parts of the retail unit would be used, this is in and of itself is not a reason to refuse planning permission. If such uses were specified, it could unduly restrict the use of the retail unit. For instance, the occupants of the retail unit may change over time and different occupiers of the building may want to use the floorspace in different ways. Moreover, an existing business user may want to adapt how they use the retail unit to meet varying business demands.
26. Indeed, the appellant explains that the additional floorspace could be used to provide an additional sales area and/or a back office and/or a storage area for goods. Providing the use of the extended ground floor falls within the Class A1, such works would not be taken to involve development of the land⁵. For these reasons, it is not necessary for the proposed floor plans to specify how the different parts of the retail unit would be used.
27. The Council have drawn my attention to an appeal decision from November 2019⁶ where an Inspector refused prior approval for a change of use of part of an existing shop in a local shopping parade within the Borough to a residential flat. The remaining part of the unit would have remained in retail use.
28. The Inspector's decision related to the proposed loss of part of an existing retail unit, whereas the proposed development would retain and extend an existing retail unit located on a local shopping parade. Consequently, I consider that the appeal decision is materially different to the current proposal. As such, I have afforded the Inspector's decision limited weight.

⁵ Section 55(2)(f) of the Town and Country Planning Act 1990

⁶ PINS Ref: APP/C5690/W/19/3234088

29. In conclusion, the proposed development would result in the creation of a larger retail unit on the ground floor of the appeal property. The appeal site is located within a local shopping parade where the Council seek to retain and enhance such uses in order to support the provision of essential daily goods and services for local residents. For these reasons, the proposal would not conflict with Policy 6 of the CS and DM Policy 16 of the LP.
30. I am cognisant that the previous Inspector concluded that it was not apparent that the ground floor extension could be retained and put to a lawful use. However, at that time, the appellant did not put forward a proposal to retain the extension for retail use, which is now the case. As set out above, I have found that the proposal would be acceptable and in accordance with the aforementioned development plan policies.
31. The Council have expressed concerns about the design and appearance of the existing lightwell and argue that this part of the development does not accord with Policy 15 of the CS and DM Policy 31 of the LP. However, for the reasons given above, such works fall outside of the scope of this appeal. Consequently, these policies are not applicable to this main issue.

Conditions

32. The Council have suggested five conditions which I have considered against the tests as laid out in paragraph 55 of the Framework. In the interests of precision and brevity, I have amended the wording of some of the conditions.
33. The Council suggest that planning permission should be granted subject to a one-year time limit condition, which would be shorter than the standard three-year time limit. The Council explain that a shorter commencement period is necessary due to the enforcement notice which was upheld at appeal.
34. The Planning Practice Guidance states that "The local planning authority may wish to consider whether a variation in the time period could assist in the delivery of development. For example, a shorter time period may be appropriate where it would encourage the commencement of development and non-commencement has previously had negative impacts".
35. The appellant has not objected to the condition and explains that the proposed works could be 'carried out almost immediately'. On that basis, and, given that a shorter time period could assist in the delivery of development, which in turn would result in the cessation of the existing unlawful residential use, I am satisfied that a one-year time limit condition is reasonable.
36. It is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty.
37. To safeguard the living conditions of neighbouring occupiers, it is necessary to impose conditions relating to the storage of refuse and recycling bins and the details of sound proofing. The appellant explains that sound proofing has been dealt with under the Building Regulations. However, no substantive details of the sound proofing have been submitted as part of the appeal.
38. Finally, to ensure the provision of adequate cycle parking facilities in order to promote sustainable movement, I have imposed a condition requiring the full details of cycle parking facilities to be agreed with the Council.

Conclusion

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

Christopher Miell

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 1 year from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Location plan (HM Land Registry Title Number: SGL356710)
Drawing no: 305SR-C-02 Rev D
- 3) Prior to the first occupation of the development hereby permitted, full details of the sound proofing for the walls and/or ceilings where residential parties non domestic use shall be submitted to and approved in writing by the local planning authority. The sound proofing shall be implemented as approved prior to the first occupation of the development and retained as such thereafter.
- 4) Prior to the first occupation of the development hereby permitted, full details of the provision of refuse and recycling storage facilities to serve the development shall be submitted to and approved in writing by the local planning authority. The storage facilities shall be implemented as approved prior to the first occupation of the development and retained as such thereafter.
- 5) Prior to the first occupation of the development hereby permitted, full details of the cycle parking facilities to serve the development shall be submitted to and approved in writing by the local planning authority. The cycle parking facilities shall be implemented as approved prior to the first occupation of the development and retained as such thereafter.

***** End of Conditions *****