



Appeal Decision

Site visit made on 10 November 2020

by J Hunter BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2020

Appeal Ref: APP/X5990/W/20/3252806

21 Strutton Ground, London SW1P 2HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant [outline] planning permission.
 - The appeal is made by J Jamilzada against the decision of City of Westminster Council.
 - The application Ref 19/07970/FULL, dated 11 October 2019, was refused by notice dated 6 February 2020.
 - The development proposed is described as change of use from retail shop (use class A1) to restaurant (use class A3) and installation of associated kitchen extract system.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. During the course of the appeal the Government reformed the planning use classes with a revised use class order coming into force 1 September 2020. The amendments to the Use Classes Order 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."
3. Paragraph 4 of the 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."
4. The planning application was submitted before the relevant period. Therefore, the appeal must be determined by reference to those uses or use classes which applied in relation to England on 31st August 2020.
5. The parties were given the opportunity to comment on these reforms and the implications for the appeal. I am therefore satisfied that no prejudice has been caused.

Main Issues

6. The main issues in this appeal are i) the effect of the proposed change of use on the viability and character and function of the Strutton Ground/ Artillery Row Local Centre and ii) the effect of the proposed extraction system on the character and appearance of the host building and whether it would preserve or enhance the character or appearance of the Broadway and Christchurch Gardens Conservation Area (CA).

Reasons

Effect on Strutton Ground/ Artillery Row Local Centre

7. The appeal property is a ground floor retail unit (A1) with residential accommodation to the first and second floors. It is proposed to change the use of the ground floor to accommodate a hot food takeaway (A3). The site lies within the 'Core Frontage' of the Strutton Ground/ Artillery Row Local Shopping Centre as defined by the City of Westminster Unitary Development Plan 2007 (UDP).
8. Policy SS7 of the UDP and Policy S21 of Westminster's City Plan 2016 (WCP) sets out the Council's approach to protecting designated Local Shopping Centres for the service that they provide to residents, workers and visitors, with Policy S21 placing emphasis on the retention of A1 uses. In this regard, the development plan only permits change of use from A1 in exceptional circumstances or where the Council considers that the unit is not viable, as demonstrated by long-term vacancy despite reasonable attempts to let.
9. The Council refers to submissions made as part of the original planning application which outline the history of the unit as a phone shop and menswear shop. The submissions state that; *"The change of use is as a result of marketing the A1 use without securing a tenant, as a result the applicant is forced to apply for a change of use in order to maintain business continuity and the viability and vitality of the locality."*
10. I have not been provided with any substantive evidence in relation to any marketing activity carried out in relation to the property. Therefore, there is no demonstration that reasonable attempts have been made to market the retail unit for an appropriate and continuous period of time. Consequently, I am not satisfied that an alternative retail use could not viably trade from the premises.
11. The appellant has not demonstrated that exceptional circumstances exist in the context that the A1 retail use represents an unviable prospect. The proposed change of use, and subsequent loss of the retail unit, would fail to accord with Policy SS7 of the UDP and Policy S21 of the WCP resulting in a harmful effect on the character and function of the Strutton Ground/ Artillery Row Local Centre.

Character and appearance

12. The proposal includes the installation of a kitchen extraction system that would have a relatively long length of extraction flue. The flue would break through the roof of the ground floor rear outrigger, across an existing catslide roof, extending up the full height of the rear elevation before terminating approximately 1metre above the ridge of the appeal building but below that of the adjoining building.

13. Policy DES 6 of the UDP relates to the design of alterations and extensions at roof level, it states that where the extension would be visually intrusive or unsightly when seen in longer public or private views from the ground or upper levels it may be refused. Furthermore, Policy DES 1 of the UDP requires proposals to be of a high quality design that improve the quality of adjacent spaces around or between buildings. The supporting wording to Policy DE5 confirms that the aim of the policy is to ensure that new building works are successfully integrated into their environments.
14. I consider that by virtue of its scale and materials the proposed extraction flue would introduce an unattractive element to the rear elevation that would appear as an incongruous and unsightly feature. In this regard the proposal would have a significantly detrimental effect on the character and appearance of the host building, thereby failing to comply with UDP Policies DE1, DE5 and DE6 as well as Policy S28 of the WCP which require, amongst other things that developments seek to accomplish the highest standards of design and respect local distinctiveness.
15. The appeal property is located within the Broadway and Christchurch Gardens Conservation Area, its character, is derived predominantly from the form, scale, urban grain and historic use of the surrounding area. The appeal building is located on Strutton Ground, a pedestrianised street that is characterised by modest, small scale buildings laid out in a tightly knit pattern. The form and scale of the buildings in the immediate vicinity have a contrasting character to the more spacious urban grain and larger buildings in the remaining parts of the CA to the north and west which adds to the significance of the CA as a whole.
16. Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker to pay special attention to the desirability of preserving and enhancing the character or appearance of Conservation Areas (CA). Policies S25 of the WCP and DES 9 of the UDP also seek to preserve or enhance the character or appearance of CAs.
17. The rear of the appeal building, and the adjacent upper floor residential accommodation is accessed via a gated ginnel that runs along the side of the appeal property. As such there is no public access or ground floor views into the site of the proposed extraction flue.
18. The significance of a CA is dependent upon how it is experienced. Under such circumstances case law¹ has established that proposals must be judged according to their effect on a CA as a whole and must therefore have a moderate degree of prominence. Given the above and acknowledging the relatively secluded position of the proposed extraction system it would not be conspicuous in the context of the wider CA. Consequently, I find that the proposal would not be detrimental to the CA and thus would preserve its significance.
19. In this regard the proposal would accord with the conservation requirements of Policies S25 of the WCP and DES 9 of the UDP.

¹ South Oxfordshire DC v SSE & J Donaldson [1991] CO/1440/89

Planning Balance and Conclusion

20. Paragraph 12 of the National Planning Policy Framework (the Framework), dictates that planning applications must be made in accordance with the development plan unless material considerations indicate otherwise.
21. The implications for the appeal being determined beyond 31 August 2020 is that the proposed change of use would no longer constitute an act of development and therefore the retail use of the unit could be lost without the need for planning permission.
22. This represents a significant fallback for the appellant in the event that the appeal was to fail and I am satisfied that there is a greater than theoretical possibility of this fallback option being implemented. Therefore, I give the fallback position considerable weight as a material consideration that outweighs the conflict, I have found with the development plan in regard to the proposed change of use.
23. Notwithstanding the above, there are two inextricably linked elements to the proposal comprising the change of use and the proposed extraction unit. The extraction system would be required in order for the proposed use as a hot food takeaway to function safely and therefore they are not severable elements and I must determine the appeal as a whole.
24. Whilst I have found that the proposal would preserve the significance of the CA, it would by virtue of its poor design conflict with the requirements of DE1, DE5 and DE6 of the UDP as well as Policy S28 of the WCP. The resulting consequence would be significant harm to the character and appearance of the host dwelling. I afford this significant weight in the overall planning balance.
25. I have taken into account the appellant's submissions in relation to the benefits associated with the proposal, they are largely related to the change of use which I have determined does not now need planning permission. As I did not find harm in relation to the CA I am not required to assess public benefits in the context of paragraph 196 of the Framework. Nonetheless, given the small scale of the proposals, the economic, social and environmental benefits put forward would be limited and of neutral consequence in the overall planning balance.
26. Accordingly, there are no material considerations that would justify a decision other than in accordance with the development plan. Therefore, for the reasons set out above and taking into account all other matters, I conclude the appeal should be dismissed.

J Hunter

INSPECTOR