



Appeal Decision

Site visit made on 17 November 2020

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2020

Appeal Ref: APP/A5840/W/20/3253259

Basement and Part Ground Floor, 21 Borough High Street, London SE1 9SE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Bajwa Enterprises Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref 20/AP/0454, dated 7 February 2020, was refused by notice dated 2 April 2020.
 - The development proposed is change of use from A1 to A3.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) for the change of use from shop (use class A1) to restaurant/café (use class A3) at Basement and Part Ground Floor, 21 Borough High Street, London SE1 9SE in accordance with the terms of the application Ref 20/AP/0454, dated 7 February 2020, and the plans submitted with it, subject to the following conditions:
 - 1) The rated noise level from any external plant and equipment shall be 10 dB(A) or more below the lowest relevant measured LA90 (15min) at the nearest noise sensitive premises. Prior to the commencement of the use hereby approved, details of such plant and equipment, including a written acoustic report detailing the proposed scheme, shall be submitted to and approved in writing by the Local Planning Authority. The method of assessment shall be carried out in accordance with BS4142:1997 'Rating industrial noise affecting mixed residential and industrial areas'. Any plant and equipment shall be installed and constructed in accordance with the approved details and shall be permanently maintained as such thereafter.
 - 2) Prior to the commencement of the use hereby approved, the proposed extract duct, for the extraction and venting of odours, fats and particulate matter resulting from the associated cooking activities, shall be installed in accordance with full details that shall firstly have been submitted to and approved in writing by the Local Planning Authority. The measures concerned shall thereafter be maintained in accordance with the approved details.

Procedural Matters

2. The description of development in the fourth bullet of the above header is taken from the original prior approval application form. This is different to that

in the Council's decision notice which refers to change of use of two A1 units to one A3 unit. This relates to the situation whereby No 21 is split at ground floor level into two separate shops. For clarity the reference to A1 relates to the use class comprising shops and A3 to that comprising restaurants and cafes. I also note that, although not included in the description of development, the submitted plans show provision for an external extraction duct. I have determined the appeal on that basis.

3. Since the Council issued its decision, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the UCO amendments) have introduced further changes to the Town and Country Planning (Use Classes) Order 1987 (the UCO). This includes the introduction of the new Class E which, amongst other uses, includes those subject to this appeal such that the change from shops to a restaurant/café would no longer comprise development requiring either planning permission or prior approval. I have therefore taken this into consideration. However, the appeal must be determined with reference to the UCO prior to the UCO amendments, due to the original application having been submitted before 1 September 2020. The appeal therefore falls to be considered under Schedule 2, Part 3 Class C of the GPDO.

Main Issues

4. The main issues are the effect of the proposed development in terms of:
 - i) the sustainability of the protected shopping frontage;
 - ii) local transport and highways;
 - iii) noise and odours generated.

Reasons

GPDO basis for determining the appeal

5. The GPDO sets out in Schedule 2, Part 3, Class C that development consisting of a change of use from a use falling within Class A1 (shops) to a use falling within Class A3 (restaurants and cafes) is permitted development subject to certain criteria set out in paragraph C.1 and conditions set out in paragraph C.2. The Council has not raised any issues in respect of paragraph C.1 and I have no reason to conclude differently.
6. Paragraph C.2(1) states that development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to: noise impacts of the development; odour impacts of the development; impacts of storage and handling of waste in relation to the development; impacts of the hours of opening of the development; transport and highways impacts of the development; and whether it is undesirable for the building to change to a use falling within Class A3 because of the impact of the change of use - (i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 or, as the case may be, Class A2, but only where there is a reasonable prospect of the building being used to provide such services, or (ii) where the building is located in a key shopping area, on the sustainability of that shopping area; and the siting, design or external appearance of the facilities to

be provided under Class C(b) which relates to facilities for ventilation and extraction (including the provision of an external flue), and storage of rubbish, reasonably necessary to use the building for a use falling within Class A3. My determination of this appeal relates to the Council's refusal of such prior approval, which specifically concerns the main issues. The remaining issues referred to above have raised no objections from the Council and I have no basis to consider otherwise.

Sustainability of the protected shopping frontage

7. The site is located within a protected shopping frontage, allocated as such in the current and emerging development plans. Such allocation highlights the importance of maintaining the viability of the protected shopping frontage, in terms of providing local services that people expect within easy distance of their homes, increasing amenity and reducing the need to travel. In that context, the Council seeks to protect the retail (A1) provision within this location through a 50% threshold set out in policy 1.9 of the Southwark Plan, albeit that this is reduced to 40% in the emerging New Southwark Plan Proposed Submission Version, below which changes of use from A1 to another use would not be allowed. Whilst for the purposes of determining this prior approval proposal development plan policy is not the basis of the planning judgement, the policies concerning the protection of the shopping frontage are relevant to this issue.
8. The percentage of A1 units currently within the protected shopping frontage is disputed by the Appellant and Council. The Council claims this to be 13%, which indicates how crucial it remains to protect those shops that are left. However, the Appellant states it to be 39% having undertaken a survey of uses, highlighting that this would be higher were the more remote units at the southern end of the protected frontage to be discounted, and if account was taken for flexible uses. I also acknowledge that a concentration of A2 uses in one section of the frontage contributes to the reduced number of A1 units. From my observations, it is unclear as to whether some of those units identified by the Appellant as A1 are actually in that use as opposed to A3 or hot food takeaways (A5). Nevertheless, the proposal would still cause a reduction in retail uses in a situation where it is not disputed that there would be less than 40% A1 uses present, notwithstanding the factors raised above about the more remote location of part of the frontage and any claimed flexible uses.
9. Importantly however, the new Class E referred to above has been introduced because the government, as explained in the Explanatory Memorandum (EM) to the UCO amendments considered that the UCO required a complete overhaul to better reflect the diversity of uses found on high streets and in town centres and to provide the flexibility for businesses to adapt and diversify to meet changing demands. This is considered particularly important at the present time as town centres seek to recover from the economic impact of Coronavirus. The EM also states that modern high streets and town centres have changed so that they now seek to provide a wider range of facilities and services, including new emerging uses, that will attract people and make these areas viable now and in the future.
10. In light of the new scope for greater flexibility and type of uses in locations such as this, which are considered to contribute to their viability, I have

afforded substantial weight to this factor concerning the new Class E in terms of the maintained sustainability of the protected shopping frontage as a whole. Furthermore, and in any case, the proposed change of use could now occur without planning permission or prior approval under the new Class E, notwithstanding any external works that may require planning permission. This situation therefore attracts very substantial weight as a fallback position.

11. For the above reasons, the proposed development would be unlikely to harmfully affect the sustainability of the protected shopping frontage.

Transport and highways

12. The main concern of the Council in this respect relates to provision for cycle parking. Although not shown on the submitted plans, the Appellant has indicated that provision could be made for cycle storage in the basement of the building and I have no reason to consider that this would not be possible. Nevertheless, I have no substantive basis to consider that the situation would be significantly different to that existing in terms of demand for cycle parking and where there is already no existing formal provision provided on site. Furthermore, and in any case, given the circumstances relating to the above fallback position, this in itself would make the lack of cycle parking an unreasonable basis for dismissing the appeal or imposing a condition to secure details.

13. For the above reasons, I conclude on this issue that the proposed development would be unlikely to cause any harm in respect of transport and highways matters.

Noise and odours

14. In respect of odours, external extraction apparatus is proposed to be installed on the rear elevation of the building concerned, further details of which could be reasonably secured through a condition. The Council raises no objections on noise grounds subject to a condition to control any noise generated by plant and associated equipment, and I have no basis to consider differently.
15. For the above reasons, I conclude on this issue that the proposed development would be unlikely to cause any harm in respect of noise and odours.

Other matters

16. I have had regard to my statutory duty to consider whether the proposal would preserve or enhance the character or appearance of the Borough High Street Conservation Area (the CA). The CA is characterised by a variety of types, ages and designs of buildings. The proposed external extraction duct would be positioned discretely to the rear of the property where sight of it from public vantage points in the vicinity would be very limited due to intervening buildings. Therefore, subject to further details that could be secured by condition, it would be unlikely to be a prominent feature in the context of the existing streetscape. As such the integrity of the CA would be maintained such that its character and appearance would be preserved.

Conditions

17. The Council has suggested four conditions were I to allow the appeal. I have omitted two and amended the wording of the others. The standard three year

commencement condition would be unnecessary as this is a condition of prior approval under Schedule 2, Part 3, Class C paragraph C.2(3) of the GPDO. Conditions to control noise levels and odours through a requirement for the submission and implementation of details relating to needed external apparatus would be reasonable and necessary in the interests of the amenities of neighbouring occupiers. However, a condition to secure details and implementation of cycle storage would not be reasonable in the specific circumstances for the reasons referred to under the second main issue.

Conclusion

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

Andrew Dawe

INSPECTOR