



Appeal Decision

Site visit made on 8 December 2020

by A Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 31 December 2020

Appeal Ref: APP/E5900/W/20/3259794

Basement and Ground, 176 Commercial Road, London E1 2JY

- 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 Aminur Khan against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/20/00179, dated 7 January 2020, was refused by notice dated 27 March 2020.
 - The development proposed is change of use of ground floor from Class A1 to mixed A1/A3 (sui generis).
-

Decision

1. The appeal is allowed and planning permission is granted for change of use of ground floor from Class A1 to mixed A1/A3 (sui generis), at Basement and Ground, 176 Commercial Road, London E1 2JY in accordance with the terms of the application, Ref PA/20/00179, dated 7 January 2020, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No. BDD_015_01; Drawing No. BDD_015_02.1; Drawing No. BDD_015_03.
 - 3) Within one month of the use hereby permitted taking place, equipment to control the emission of odour, noise and vibration shall be installed. The equipment shall be designed to ensure that its rating level shall be at least 10dB lower than the existing background noise level ($L_{A90,15}$) at any given time of operation. The noise levels shall be measured or predicted 1m externally to any window at the nearest residential façade. Measurements and assessment shall be made according to BS 4142:2014. Within three months of installation, a post -installation noise assessment shall be carried out and the results submitted to the Council for its written approval. The external plant shall be retained in accordance with those approved details thereafter for so long as the hereby permitted use continues.
 - 4) The use allowed by this permission shall not take place other than between the hours of 0800 – 2200 hrs, Mondays – Sundays.

Procedural Matter

2. Since the appeal was lodged Use Classes have changed. However, applications submitted before 1 September 2020 are determined according to the previous Use Classes.

Main Issues

3. The main issue is whether the development would accord with relevant local policies with regard to retail outlets outside neighbourhood centres.

Reasons

4. The appeal site has a café on the ground floor, Café Classic, which advertises all day breakfast and lunch. The Council is satisfied that it also operates a hot food takeaway business and I see no reason to disagree with the Council in this regard. The appeal has been lodged to regularise the existing situation.
5. Policy D.TC3 of the Local Plan supports the loss of A1 retail units outside neighbourhood centres where the site is within 300m metres of a town centre location, and there is evidence that the shop has been vacant for a period of 12 months. As this premises is not vacant, it fails to meet these criteria.
6. From the street, the café's appearance and advertising seems entirely appropriate. There were tables and chairs for seated customers. If the appeal was allowed, it appears that the café function would remain and this is confirmed by the plans. Consequently, there would not be any loss of an A1 retail outlet.
7. The Council raises concerns that Policy SD7(D)(2) of the London Plan requires commercial space to be appropriately located, fit for purpose with at least basic fit out and not compromised in terms of layout, street frontage, floor to ceiling heights and servicing. However, the Council does not identify in which way this development would fail to meet these requirements. Nor is this policy cited in the reasons for refusal.
8. Moreover, I see no reason to disagree with the appellant that mixed A1/A3 uses can contribute to the viability and vitality of high streets. I am unclear why mixed use would affect the business's viability as argued by the Council. There is also a large proportion of solely A1 outlets in the area. Furthermore, although the appeal has been determined in accordance with the former Use Class categories, under the recent Use Class amendments, A1 and A3 Use Classes will be subsumed into one Use Class.
9. In the light of the above I conclude that the development would accord with relevant local policies with regard to retail outlets outside neighbourhood centres, and would not be contrary to Policy D.TC3 of the Local Plan.

Myrdle Street Conservation Area

10. The Council has not raised any concerns in relation to the Myrdle Street Conservation Area (MSCA) and on the basis of what is before me, I see no reason why the development would fail to preserve or enhance the character or appearance of the MSCA.

Conditions

11. I have considered the conditions suggested by the Council and where appropriate have amended those conditions in line with best practice.
12. In addition to the standard time condition I have imposed a condition regarding the drawings, for the avoidance of doubt. I have also imposed a condition requiring the installation of ducting equipment to ensure that the amenity of nearby occupiers is not adversely affected by noise, smells, or vibration, as I did not see any ducting equipment at my visit. The efficacy of the installation is to be checked within a given period, to ensure the Council has control over the installation.
13. Finally, I have imposed a condition restricting the hours of operation, also to safeguard the amenity of nearby occupiers.

Conclusion

14. In the light of the above, I conclude that the appeal should be allowed.

A Blicq

INSPECTOR