



Appeal Decision

Site Visit made on 8 December 2020

by R E Jones BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2021

Appeal Ref: APP/A5840/W/20/3257073

Eastern European Foods, 353 Lordship Lane, London, SE22 8JJ

- 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 Dr Anahit Zakaryan against the decision of London Borough of Southwark.
 - The application Ref 20/AP/0976, dated 1 April 2020, was refused by notice dated 28 May 2020.
 - The development proposed is change of use of premises from A1 to D1 (laser treatment and beauty clinic).
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Decision

1. The appeal is allowed, and planning permission is granted for the change of use of premises from A1 to D1 (laser treatment and beauty clinic) at Eastern European Foods, 353 Lordship Lane, London SE22 8JJ, in accordance with the terms of the application, Ref 20/AP/0976, dated 1 April 2020, and subject to the conditions in the attached schedule.

Procedural Matters

2. The application and appeal forms describe the proposal as a 'change of use of premises from A1 to D1 (laser treatment and beauty clinic)'. The Council have used a different description of development in their refusal notice referring to the proposed use as 'Sui Generis' instead of D1. Yet this was revised without the agreement of the applicant, while there is limited evidence from the Council indicating the reasons why they changed the use class relating to the proposal.
3. In the context of this appeal, whilst the main parties differ in their position regarding which use class the proposal belongs to, it is not for me to judge the specifics of the case in that regard. However, since the appellant did not agree to the revised description, I have considered the appeal on the basis of the original description given at section 5 of the application form and set out in the banner heading above.
4. 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 a shop to a health clinic use would no longer comprise development requiring planning permission. 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 Issue

5. The effect of the proposal on the vitality and viability of the protected shopping frontage.

Reasons

6. The appeal site is located within a Protected Shopping Frontage. Policy 1.9 of the Southwark Plan (2007) (the SP) outlines that within protected shopping frontages, planning permission for changes of use away from Use Class A1 will only be granted provided that five criteria are met. In particular, criteria ii) requires that the premises have been vacant for a period of at least 12 months with sufficient effort to let the property being demonstrated, or have not made a profit over a 2 year period. The Council's officer's report reaffirms that either marketing or profit evidence needs to be provided to satisfy the criterion, and not both.
7. The appellant's profit evidence includes tax documents and a letter from their accountant. The Council has concerns regarding the level of detail in respect of the submitted tax documents given that the name of the business and its proprietor is not referred to on these. However, the accountant's letter provides clarification regarding the name of the business and its owner, whilst also indicating that the profits generated in the two tax years prior to the submission of the application would not be able to sustain a reasonable income.
8. In the absence of any specific guidance from the Council on the information required to satisfy criteria ii), the details presented are considered acceptable and provide me with sufficient confirmation that the last operating use at the appeal site is financially unviable with limited profitability for 2 years. Criteria ii) is therefore satisfied, whilst subject to appropriate conditions, the Council has not identified any conflict with criteria i, iii, iv or v of SP Policy 1.9. On the basis of the submitted evidence I see no reason to disagree.
9. The Council has indicated that the premises benefits from business rates relief and has recently received a £10,000 grant. Yet, there is no evidence to show that this has improved the profitability of the premises.
10. The proposal would not conflict with Policy 1.9, but the policy has been overtaken by the changes which have subsequently been made to the Use Classes Order, in particular the revocation of Classes A and D1 and their replacement with Class E. By creating a broader use class for town centre uses, the revised Order recognises the importance of a flexible approach, and the need for a wider range of uses to sustain the vitality and viability of high streets.
11. In the case of the proposed use, it would enhance the range and diversity of services within the shopping frontage and represents a use that would continue to attract people and make the frontage viable now and in the future. The proposal would also be consistent with the requirements of paragraph 85 of the National Planning Policy Framework (the Framework), which is concerned with

ensuring the vitality of town centres and the need for a positive approach to their growth, management and adaptation.

12. Therefore, I conclude that the proposal would not cause harm to the vitality and viability of the protected shopping frontage. It would comply with Policy 1.9 of the SP for the reasons already referred to, while meeting the aims of Strategic Policy 3 of the Core Strategy, April 2011, in maintaining a wide range of shops, services and facilities. The proposal would also align favourably with the Dulwich Supplementary Planning Document, 2013, where it seeks to maintain town centres for their wide retail offer and a good range of services.

Conditions

13. I have had regard to the Council's suggested conditions, amending them where necessary for clarity and to ensure compliance with the tests set out in paragraph 55 of the Framework. I also sought agreement from the Appellant to the pre-commencement condition.
14. In order to ensure that refuse facilities are adequate and appropriately sited it is necessary that details are approved and implemented before the proposed use commences.
15. I have amended the suggested condition relating to the approved use so that it reflects the changes to the UCO. This is considered reasonable and necessary in this particular case to consider the effect of future uses within the amended use class on neighbouring living conditions. It is also necessary in the interests of neighbouring living conditions that a condition controlling the opening hours of the premises is required at this location. The hours of opening are those suggested by the Council.
16. Although not proposed by the Council, I have included a condition listing the approved plans in the interests of certainty.

Conclusion

17. For the above reasons the appeal should be allowed.

RE Jones

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be commenced within three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawing numbers: 4D00, 4D01, 4D03, 4D04, 4D05, 4D06 and LL01.
- 3) Before the first use hereby permitted begins, details of a bin storage area and recycling facilities at the site shall be submitted to and approved in writing by the Local Planning Authority. The use permitted shall not begin until the bin storage area and recycling facilities have been implemented in accordance with the approved scheme. These facilities shall be kept available for use in association with the development at all times.
- 4) The use hereby permitted shall only be open for customers between the hours of 10:00 and 20:00 on Mondays to Sundays and Bank/Public Holidays.
- 5) The premises shall be used for a laser treatment and beauty clinic and for no other purpose (including any other purpose in Class E(e) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

End of Schedule