



Appeal Decision

Site Visit made on 5 January 2021

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th February 2021

Appeal Ref: APP/Q5300/W/20/3257436
911 Green Lanes, LONDON, N21 2QP

- 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 Tarik Shekerzade against the decision of the Council of the London Borough of Enfield.
 - The application Ref 20/01450/FUL, dated 12 May 2020, was refused by notice dated 8 July 2020.
 - The development proposed is Change of use from Office (B1) to cafe/restaurant (A3).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from Office (B1) to cafe/restaurant (A3) at 911 Green Lanes, London, N21 2QP in accordance with the terms of the application, Ref 20/01450/FUL, dated 12 May 2020, and the plans submitted with it, 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: Site Plan, Scale 1:1250; Block Plan dwg no 911c; Existing and Proposed Section dwg 911a; Existing and Proposed rear elevation dwg 911b; Proposed Floor Plan dwg 911; Existing Floor Plan dwg 911d
 - 3) Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. The details shall include:
 - an acoustic report of the proposed scheme and the existing air conditioning unit; and
 - details of any mitigation required, which may include the enclosure of the proposed plant.

All equipment installed as part of the approved scheme shall thereafter be operated only during the opening hours of the premise and maintained in accordance with that approval and retained for so long as the use continues.

- 4) No refuse or waste material shall be left or stored anywhere on the site other within the building or refuse area as indicated on drawing no 911c.
- 5) Before the development hereby permitted commences at the site, a Service and Delivery Management Plan (SDMP) shall be first submitted to and approved in writing by the local planning authority. The SDMP shall describe the means of servicing and times of deliveries and provision for servicing/delivery vehicles. The SMP should identify exactly how and what types of vehicles are anticipated for the commercial uses. The approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
- 6) The use hereby permitted shall only take place between the following hours:
1000 - 2300 Mondays - Saturdays
1000- 2200 Sundays and Bank Holidays.

Preliminary Matters

2. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment)(England) Regulations 2020 came into force and have made significant amendments to the previous system of use classes. Under the new system, Class A has been revoked and a new 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 within Class E.
3. As the application was submitted before the new regulations came into force, it must be determined in accordance with the previous Use Classes Order. I have therefore treated the building as being in B1 use and the proposed development as being an A3 use. However, in determining this appeal proposal, I have also had regard to the implications of the changes that have since taken place, including their effect on relevant development plan policy.
4. The Council and appellant were invited to comment on the effects of the changes for the appeal proposal and the appellant has responded seeking a determination on the appeal as submitted.

Main Issues

5. The main issues are:

- the effect of the proposed change of use on the vitality and viability of the local centre;
- the effect of the proposed change of use on parking conditions, and consequently highway safety; and
- whether the development would provide acceptable living conditions for existing occupiers, in respect of noise and odour.

Reasons

6. The site is located within the Winchmore Hill Green Dragon local centre, a mixed commercial/retail area, with a number of other A3 uses within the vicinity of the site as well as A1 uses. Local Centres are defined within Policy 17 of The Enfield Plan Core Strategy 2010-2025 (CS) as providing core local shopping facilities and services (such as convenience store, post office, pharmacy and newsagent)

for their respective local communities; largely catering for a catchment area within walking distance.

7. The appeal site was previously in use as a B1 office but was vacant at the time of my visit. Policy CP19 of the CS supports the conversion of surplus offices to other uses within local centres, where it can be demonstrated that there is no demand for offices in this location. The site has been vacant since December 2019 and is not currently contributing to the vitality of the local centre, and its re-use would not cause harm to the retail character of the centre. I also note that the Council states within their delegated report that they have no in principle objection to the loss of office floorspace outside of the main town centre.
8. Policy DMD28 the Improving Enfield Development Management Document 2014 (DMD) seeks to retain Class A uses within local centres and in particular to protect existing A1 uses. It also sets out that any change of use from A1 to other town centre uses will only be permitted if a shop unit has been vacant for 12 months and robust evidence has been submitted to demonstrate that all efforts have been made to market the unit over that period. However, the proposal would not conflict with Policy DMD28, as the existing unit is not within an A1 use which the policy seeks to protect. Therefore, I do not consider it necessary for the appellant to undertake a marketing campaign to demonstrate demand for an A1 use, before consideration could be given to the proposed A3 use.
9. In addition, whilst this policy seeks to protect Class A uses within local centres, it has been overtaken by the changes which have subsequently been made to the Use Classes Order, in particular the revocation of Class A and its partial replacement with Class E. The reason for these changes are described in the accompanying Explanatory Memorandum as being to better reflect the diversity of uses found on high streets, and to provide flexibility for businesses to adapt and diversify to meet changing demands. 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.
10. Policy DMD32 of the DMD states that development involving the establishment of food and drink uses (A3, A4 and A5) will be permitted within local centres, subject to detailed criteria including that there must be no adverse effects to the character, role, function, vitality and viability of the shopping centre and the local area. The proposal would complement the shopping function of the centre and contribute to the night time economy within the locality. As such, the proposal would be consistent with the requirements of Policy DM32 as it would contribute to the vitality and viability of the shopping centre.
11. In conclusion, the proposed change of use would not cause harm to the vitality and viability of the area and it would complement the existing retail function of the centre, in accordance with policies CP9, CP16, CP17 and CP19 of the CS which supports the conversion of surplus offices into other uses, maintaining local centres, promoting accessibility and job creation. The proposal would also be in accordance with policies DMD16, DMD22, DMD24, DMD25, DMD28, DMD32 and DMD34 of the DMD which together seek to promote proposals for Class A uses, protect small business, enable food and drink establishments

within local centres, foster a diverse evening economy and resist the loss of employment opportunities.

12. The proposal would also accord with policies 3.9, 4.2, 4.7, 4.8 and 7.4 of the London Plan which promote a mixed and balanced economy, supporting the development of office provision, retail provision related to the function of the town centre and contributing to establishing an enhanced character for the future function of the area.
13. The Council have referenced policy DMD39 within their decision notice, however the design considerations of the business premises are not relevant to this main issue. They have also referenced paragraphs 4.9 and 4.11 of the London Plan, however these policies are also not directly relevant to the main issue, as these refer to the provision of small shops and supporting the use of information and communication technology.

Parking

14. Policy DMD 48 states that the submission of a transport assessment may be required for minor developments, as well as servicing and delivery plans to ensure that developments provide for safe and legal delivery, collection and servicing. In addition, policy DMD 32 states that development involving the establishment of food and drink uses will only be permitted where access, servicing and parking arrangements do not result in an adverse impact on the safety of pedestrians and traffic flows.
15. The appeal site is located within an area of restricted parking, with a maximum stay of 2 hours on nearby streets. It has a PTAL rating of 3, which indicates moderate level of access to public transport and the site includes parking for two vehicles. As the site is located within an existing local centre, where a range of shops and facilities are provided, customers visiting the proposed restaurant may do so as part of a linked trip and are likely to be from the existing catchment area, which policy 17 of the CS acknowledges is within walking distance.
16. There are a number of public car parks within walking distance of the site and these would also be available for customers visiting the proposed restaurant. As such, in this instance the proposed development would not significantly impact demand for on-street parking and future patrons of the proposed restaurant would also have options other than the private motor car. Therefore, in this instance the level of parking provided would be acceptable.
17. The appellant has not submitted a transport assessment or any details of the servicing and delivery plans as required by policy DMD 48, however the policy states only that these may be required based on site specific circumstances. In this instance, there is a loading bay opposite the site which provides space for the servicing of the existing businesses that are located within the local centre and would be available for use by the proposed restaurant.
18. Having regard to the site's location within an existing local centre, it has not been demonstrated within the evidence before me that the proposed use would lead to an increase in demand for either parking or servicing and deliveries, than that which previously existed, or is significantly different from the other similar businesses that operate within the vicinity of the site. Therefore, I am satisfied that in the circumstances of this appeal a transport statement would not be

required and that a servicing and delivery plan could be agreed by a planning condition to ensure that appropriate measures are in place, prior to the restaurant first being brought into use.

19. In conclusion, the effect of the proposed change of use would not be detrimental to parking conditions, and consequently highway safety, in accordance with policies CP24, CP25 and CP26 of the CS which encourages sustainable travel choices, promoting pedestrians and cyclists and public transport. It would also accord with policies DMD 32, DMD 45 and DMD 48 of the DMD which sets out the required parking standards for development and permits food and drink establishments, provided that the access, servicing and parking arrangements do not result in an adverse impact on traffic and parking.
20. The development would also comply with policies 6.3, 6.9 and 6.13 of the London Plan which state that development should not adversely affect safety on the transport network, promote cycling and that parking demand should make use of existing public off-street provision.

Noise and odour

21. Policy DMD32 requires proposals for food and drink establishments to ensure that there is no detrimental effect to the amenity of neighbouring residents. The proposed A3 use would be sited on the ground floor of the building with residential flats located above. The flats are accessed via an external staircase at the side of the building which leads up to a first-floor balcony providing access to each flat. The rear boundary of the site is also adjacent to the residential properties of 1 & 3 Sherbrook Gardens.
22. The plans indicate that a flue/heat extractor would be installed on the flat roof, which runs parallel to the access to the existing flats and would be set behind the parapet of the flat roof. Further along this boundary an existing air conditioning unit is positioned which faces towards the garden of 1 & 3 Sherbrook Gardens.
23. There are also a number of ground floor windows along this boundary and concerns have been raised that if these were opened then noise and odour would also cause disturbance to the occupiers of 1 & 3 Sherbrook Gardens. These windows are indicated on the proposed floor plan to serve the proposed toilets and seating area. Therefore, I am satisfied that there would not be increased risk of noise and odour, given their distance from the proposed kitchen area.
24. The appellant has provided details of the proposed extraction system and plant, however this does not include details of the acoustic properties of the system. The details submitted indicate that the cooking processes to be carried out on site are limited to oven cooked products, predominately pizza with other side dishes and this type of food does not commonly have a high or unpleasant odour profile. The primary grease filter and two stage carbon filtration system would also be adequate to reduce extract odours to a level where they would not cause loss of amenity to the nearest residential occupiers.
25. The appellant has taken steps to mitigate any noise impact by proposing that all fan motors are to be installed inside the premises and all fans and ductwork would be on flexible acoustic mountings to prevent vibration induced noise. This

would appear to be adequate to mitigate the noise but can be further tested post installation and prior to being first brought into use to demonstrate that any noise from the equipment would be within acceptable levels.

26. In addition, no details have been provided of the existing air conditioning unit. Although the existing B1 office use, unlike the proposed restaurant, would have been unlikely to have operated into the evening, I have not been made aware that the existing unit has caused any significant noise disturbance to existing residents. However, having regard to the longer opening hours proposed, in order to ensure that any potential impacts resulting from noise can be fully addressed, I have imposed a condition requiring that details of the air conditioning unit be submitted to, and approved by, the Council prior to the use commencing.

27. In conclusion, subject to the safeguards outlined above and to be secured by condition, I am satisfied that the proposal would not cause unacceptable harm to the existing occupiers, with regard to noise and odour. It would accord with policies CP30 and CP32 of the CS, policies DMD 64, DMD 65 and DMD 68 of the DMD and policies 7.14 and 7.15 of the London Plan, which together seek to ensure that development minimises exposure of residents to poor air quality and reduces and manages noise.

28. The Council's decision notice also refers to policies 3.9, 7.2, 7.4 of the London Plan, however these relate to the provision of mixed and balanced communities, creating inclusive environments for all users and designing development which respects local character and are therefore not directly relevant to this main issue.

Conditions

29. In addition to a condition specifying plans, which is required in the interests of certainty, a condition limiting opening hours is necessary to safeguard the living conditions of neighbouring occupiers. A condition requiring details of the extraction system to be submitted and approved is necessary for similar reasons.

30. In order to ensure that refuse facilities are adequate and appropriately sited it is necessary to restrict storage to the approved areas. I have also found it necessary to require details of the servicing and delivery arrangements associated with the approved use to ensure that these operations do not lead to parking stress within the nearby streets.

Conclusion

31. For the reasons given above I conclude that the appeal should be allowed.

G Pannell

INSPECTOR