



Appeal Decision

Site visit made on 30 November 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2021

Appeal Ref: APP/N5660/W/20/3254255

Italian Bistro, 32 Streatham High Road, London SW16 1DB

- 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 Francesco Marzano of Italian Bistro against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 19/03906/FUL, dated 17 October 2019, was refused by notice dated 13 December 2019.
 - The development proposed is a change of use from retail (Use Class A1) to restaurant/café (Use Class A3).
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from retail (Use Class A1) to restaurant/café (Use Class A3) at Italian Bistro, 32 Streatham High Road, London SW16 1DB in accordance with the terms of the application, Ref 19/03906/FUL, dated 17 October 2019, and the plans submitted with it, subject to the following condition:
 - 1) Unless within 3 months of the date of this decision a scheme for the installation of equipment to control the emission of fumes and smell from the premises is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the premises as a restaurant/cafe shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the premises as a restaurant/cafe shall cease until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved extraction system specified in this condition, the system shall thereafter be retained and operated in accordance with the approved scheme.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Procedural Matters

2. The description of development in the banner heading above is adapted from that on the appeal form, which was more concise than that used on the planning application form. I have omitted the reference to the application being 'retrospective' as this is not descriptive of the development. Nevertheless, the appeal site is already in use as a restaurant/café, and I have considered the appeal on the basis that the development has already been carried out.
3. The appeal site is a ground floor commercial unit within the Streatham Hill Primary Shopping Area (PSA), which is in turn part of Streatham Major Centre (the Centre). The unit has in the past been a shop in the A1 Use Class, but in around 2016 the appellant opened an Italian restaurant and now seeks planning permission for the change of use.
4. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 ('the UCO Amendment Regulations'), amending the Town and Country Planning (Use Classes) Order 1987 ('the UCO'), came into force on 1 September 2020. This introduced a new Commercial, Business and Service Use Class E which, as the Explanatory Memorandum to the UCO Amendment Regulations notes, is intended to better reflect the diversity of uses found on high streets and in town centres, to provide flexibility for businesses to adapt and diversify to meet changing demands, and to support the viability of these areas now and in the future. Both the previous permitted A1 use and the A3 use for which planning permission is sought fall into the new Use Class E. As a consequence the change of use proposed would, after 1 September 2020, not be a development requiring planning permission.
5. In the light of these changes to the UCO, the Council indicated that it no longer wished to object to the change of use. Nonetheless, the appeal has not been withdrawn, and Paragraph 4 of the UCO Amendment Regulations requires that applications submitted before 1 September 2020 must be determined with reference to the UCO as it stood on 31 August 2020. The planning application was submitted in October 2019 and, while I have therefore taken the UCO Amendment Regulations into account, the appeal still falls to be considered as a change from Use Class A1 to Use Class A3 as originally applied for.

Main Issue

6. The main issue is the effect of the proposal on the sustainability of the Streatham Hill Primary Shopping Area and Streatham Major Centre.

Reasons

7. Policies ED6 and ED7 of the 2015 Lambeth Local Plan (the Local Plan) together seek to support the vitality and viability of the borough's retail centres by, among other things, maintaining the predominant retail function of PSAs within major centres. Policy PN4 of the Local Plan seeks to ensure that no fewer than 60 percent of ground floor retail units within the Streatham Hill PSA remain within Use Class A1 (shops), that no more than 25 percent of units within the PSA are in Use Classes A3, A4 or A5 (food and drink), and that there are no more than 2 consecutive food and drink uses within any run of 5 units within the PSA. At the time the Council determined the planning application it found that only 48.7 percent of units within the Streatham Hill PSA were within Use Class A1. Planning permission was therefore refused on the basis that the

proportion of units in A1 use within the Streatham Hill PSA fell below the lower threshold set out in Policy PN4, and that a change of use in respect of No 32 would fail to safeguard either the shopping role of the PSA or the vitality and viability of the centre as a whole.

8. Although the appellant disputes the accuracy of the Council's survey in respect of the use of the appeal site, there is no substantive evidence before me that the Council's overall conclusions about the mix of uses within the PSA were significantly wrong. None of my observations at the time of my site visit suggested that the Council's findings might have been out by such a margin that it should have come to a different conclusion in respect of the first threshold set out in Policy PN4. I therefore agree with the Council's initial decision that the proposed development does not meet the relevant policy requirements.
9. However, the changes introduced by the UCO Amendment Regulations mean that a change of use as proposed would, after 1 September 2020, not be development requiring planning permission. The UCO Amendment Regulations are a material consideration of great weight. I therefore conclude that, although the proposal would conflict with the requirements of Policies ED6, ED7 and PN4 of the Local Plan and thus with the development plan as a whole, in this case material considerations indicate that the decision should be made other than in accordance with the development plan.

Other Matters

10. The appeal site is within the Streatham High Road and Streatham Hill Conservation Area. I therefore have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. As heritage assets are irreplaceable, the National Planning Policy Framework (the Framework) states that they should be conserved in a manner appropriate to their significance (paragraph 184). It goes on to advise that any harm or loss requires clear and convincing justification (paragraph 194) and that any harm that is less than substantial must be weighed against the public benefit of the proposal (paragraph 196). No external changes to the appeal site are proposed as part of the change of use, and although the Council expressed concern about the servicing arrangements at the rear of the property, it was satisfied on balance that the development would be acceptable in terms of its impact on the character and appearance of the Conservation Area. None of the evidence before me or what I saw at the time of my site visit leads me to a different conclusion in this respect.

Condition

11. The appeal site is on the ground floor of a block with three floors of flats above. Several interested parties living in the upper floor flats submitted comments to the Council in respect of nuisance caused by smoke and odours arising from the use of the appeal site as a restaurant/café. The appellant indicated that the previous charcoal oven which was a source of smoke has been replaced with a gas oven in response to neighbours' complaints. He also supplied statements in the name of third parties resident in the block indicating that, in their view, smoke is no longer a problem. Nevertheless, the planning application did not include any information in respect of ventilation or extraction systems and, given the close proximity of flats to the appeal site I consider that a condition

in respect of an extraction/ventilation system is necessary to protect the living conditions of neighbouring occupiers.

12. Condition 1 is therefore imposed to ensure that details of a suitable extract/ventilation system (which may, of course, be a system already in place) are submitted, approved and implemented. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of an extraction system before the development takes place.
13. No further conditions were suggested or, in my view, are necessary.

Conclusion

14. For the reasons set out above the appeal is allowed.

M Cryan

Inspector