



Appeal Decision

Site Visit made on 9 June 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2021

Appeal Ref: APP/H5960/W/21/3267006

Bowls Pavilion, Clapham Common West Side, Clapham Common, London SW4 9AN

- 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 Justin Fish against the decision of London Borough of Wandsworth.
 - The application Ref 2020/2536, dated 13 July 2020, was refused by notice dated 4 December 2020.
 - The development proposed is change of use from Pavilion D2 to Cafe A3.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from Pavilion D2 to Cafe A3 at Clapham Common West Side, Clapham Common, London SW4 9AN in accordance with the terms of the application, Ref 2020/2356, dated 11 September 2020, subject to the conditions set out in the Schedule attached to this decision.

Preliminary Matters

2. The description of development used in the banner heading and my decision above is taken from the planning application. The Council altered the description in its decision notice to "Alterations to openings and change of use from Class F2(d) (local community) to Use Class E (café)" to align with the changes made to the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) following the introduction of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regs).
3. However, transitional arrangements mean that for applications submitted before 1 September 2020, the use classes in effect at the time of the application should be used for the determination of the application. That is the case here, and I have determined the appeal accordingly.
4. During the course of the appeal, it became apparent that the appeal site was under different ownership from what was originally considered to be the case. This matter was resolved by the correct notice of ownership being served and 21 days being given for comments to be provided by the landowner. The Council was given the opportunity to respond to the comments received. I am satisfied that no main party would be prejudiced by my taking this matter into account.
5. On 20 July 2021 a revised National Planning Policy Framework was issued. The main parties were given the opportunity to comment on the implications of the resulting changes for this appeal. No comments were received. Any reference to 'the Framework' made within the decision are to this revised version.

6. The London Plan 2021 has been published by the Mayor, setting the spatial development strategy for London and is now part of the development plan. The decision notice for the appeal application does not refer to the superseded London Plan 2016. The Council's Officer Report and appellant's Statement of Case are clear that policies in the Wandsworth Development Management Policies Document 2016 (DM) are the most relevant for this appeal. As such, I have not found it necessary to seek the views of the parties on the London Plan 2021.

Main Issue

7. The main issue is the effect of the proposed development on the living conditions of occupiers of nearby residential properties, with particular regard to noise and disturbance.

Reasons

8. The appeal building is a single storey former bowls pavilion, most recently in use as an office in association with tennis court bookings. This use has ceased, and apart from the public toilets provided within the north west wing of the building, it is vacant. The appeal proposal seeks the change of use of the building to a café. The premises would operate from 0900 to 2000 hours on Mondays to Fridays and from 0900 to 2100 hours on Saturdays, Sundays and Bank Holidays. It would accommodate approximately 12-14 seated customers. Additional visits to and from the premises would likely be generated from takeaway customers. The proposed development would employ 6 part-time and 10 full-time staff. There is no DM Policy objection to the principle of the proposal.
9. The appeal building is situated close to the entrance of Clapham Common. There are numerous residential properties opposite the site on Clapham Common West Side; the nearest being approximately 40 metres from the appeal site. This section of Clapham Common West Side terminates a short distance north west of the appeal site. Two bowling greens, unkempt at the time of my visit, are situated forward of the pavilion, with tennis courts beyond. Fenced and floodlit tennis courts are also situated further east of the building. A smaller timber building is located close by, to the north west of the appeal building. At the time of my site visit this appeared to be in use as a café with a small outdoor seating area.
10. I saw this to be an active area with people entering and leaving the common, using the nearby sporting facilities, general socialising and children playing. As such, there is a level of activity and noise which is established in the area and to which residents would be accustomed.
11. Although the nearest commercial premises is stated as being over 350 metres from the appeal site, the proposed opening hours would not be out of keeping with the location of the premises, where some activities at the common are likely to continue towards and after sunset, as is indicated by the provision of floodlights at some of the tennis courts. These would not be unsociable hours in this context and the premises would not operate late into the evening when residents could fairly expect noise levels to be lower. I acknowledge the concerns regarding noise associated with the sale of alcohol and potential noise from music and from customers congregating outside during opening hours and after closing time. However, a café is a different operation to a bar, with

customers visiting primarily to eat rather than drink. In addition, many of these concerns are raised in association with a potential re-use of the bowling greens for a putting course and the manner in which patrons of that facility could be encouraged to consume alcohol. Whilst it may be the intention of the appellant to undertake a joint venture of café and putting course, the matter of a change of use of the bowling greens is not before me in this appeal. I necessarily confine my reasoning to the appeal scheme details. This is also the case with regard to the selling of alcohol from the proposed café, which would be a matter for the Council's licencing committee to determine. Operators of the proposed café would be required to adhere to any conditions set out in a premises licence should one be granted, thereby regulating operation of the use in relation to the sale of alcohol.

12. The overall number of staff and customers would be modest, commensurate with the scale of the proposal, and it is unlikely that the customers would all depart together at closing time, as may happen with a drinking establishment. A condition could be imposed to control the use of amplified sound which would further minimise the risk of noise and disturbance to neighbouring occupiers.
13. I find that the proposed use would not result in the type of disruptive activity feared by the Council. I therefore conclude that the proposal would not cause unacceptable harm to the living conditions of occupiers of nearby properties with particular regard to noise and disturbance. Consequently, there would be no conflict with DM Policy DMS1(c) which requires, amongst other matters, that new developments protect the amenity of nearby occupiers from unacceptable noise.

Other Matters

14. Whilst the appeal building is not locally or statutorily listed, it is situated within the Clapham Common Conservation Area (CA) and as such benefits from statutory protection under the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). I am required under section 72(1) of the Act to give special attention to the desirability of preserving or enhancing the character or appearance of the CA.
15. No concern is raised by the Council in respect of the effect of the proposed external alterations to the building with regard to its appearance or its effect on the character or appearance of the CA. From the evidence before me and my observations on site I also find no harm in this regard. I therefore consider that the proposed development would preserve the character and appearance of the CA.
16. The evidence indicates that a nearby property, 21 Clapham Common West Side, is a Grade II Listed Building and there is another Grade II Listed Building, comprised of 13 boundary markers that define the extent of the common, several of which are situated close to the appeal site. Given the separation distances, the small scale of the proposed changes to the appearance of the appeal building, and the likely level and type of activity associated with the proposed use, I consider that the appeal scheme would have a neutral material impact on the settings of these listed buildings. The settings would therefore be preserved.
17. Concern has been raised regarding the loss of the public toilets currently provided within the appeal building. The Council has advised that planning

permission¹ has been granted for the provision of replacement public toilets and that these would be provided prior to the closure of the existing facilities. This matter does not therefore alter my conclusion on the main issue.

18. Commercial decisions regarding lease arrangements for other buildings or land within the common are not planning matters that attract weight in my decision.
19. The proposal has attracted a significant level of local interest with third party representations being received both for and against the proposal, with a larger proportion of those being opposed. The majority of the opposing concerns relate specifically to matters connected to the linked, but nevertheless, separate subject of the aforementioned proposal for the change of use of the bowling greens to a golf putting course. They include the loss of public access to part of the common, impact on biodiversity, light pollution and re-development of Assets of Community Value. As referred to in my reasons above, matters relating to the bowling greens are outside the remit of this appeal.
20. However, in this regard, a Commons Land application, for the use of the bowling greens as a golf putting course, has been drawn to my attention. This is also a separate matter and does not therefore alter my decision on the case before me. Further, I do not consider that the proposed physical alterations or change of use to the appeal building would interfere with the way the common is currently used by local people. Public rights of access would not be impaired by the appeal proposal; thus, I do not consider that the common would be stolen by the goose (sic) were the appeal to be allowed.
21. Concern has been raised in regard to the impact of the proposal on residents parking in the area. I have not been provided with any substantive evidence to demonstrate that the proposal would result in such issues. The site is located in an area of controlled parking zones, taking this into consideration and given the small scale of development proposed, including the likely number of employees that would result, I do not consider that the proposal would be likely to generate any harmful increase in vehicle movements or car parking demand than is currently experienced. This matter does not override or affect my conclusions on the main issue.

Conditions

22. I have had regard to the list of conditions suggested by the Council. Where necessary, I have adjusted the wording to ensure it meets with the relevant tests for conditions set out in the Framework. I have not required the development to be carried out in accordance with the information supplied in the appellant's supporting documents titled "Putt in the Park Response RE: Planning Application 2002/2536" and "Putt in the Park in the Community" as I am satisfied that the relevant matters contained within those documents can be secured by the imposition of separate conditions as set out below.
23. In addition to the standard time limit for implementation, a condition setting out the approved plans is necessary to provide certainty. A condition requiring the use of matching external materials is reasonable and necessary to preserve the character and appearance of the building and CA. In order to protect the living conditions of nearby occupants, it is necessary to impose conditions

¹ Council reference 2020/0620

setting out the opening hours of the premises and for restricting the use of amplified sound. A condition is necessary to ensure the provision of suitable refuse and recycling storage in the interests of amenity and hygiene.

24. A condition is also reasonable and necessary to prevent a change of use to other uses within the same Use Class which could introduce harmful impacts on the living conditions of nearby occupants. I have cited Class A3 of the UCO within the condition because of the 'transitional arrangements' set out in the Regs as referred to earlier in my decision.

Conclusion

25. For the above reasons the appeal is allowed.

S Tudhope

INSPECTOR

Schedule of 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: Location Plan Version 1; Existing Elevations Version 1; Proposed Elevations Version 1.
- 3) All external materials, including fenestration, used in the construction of the development hereby approved shall match the type, texture, tone, colour, size and profile of those used on the existing building and shall be retained as such thereafter.
- 4) The building shall be used as a café (Class A3) for the sale of food and drink, principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises, and for no other purpose falling within Class A 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
- 5) The use hereby permitted shall only be open for customers between the following hours: 0900 to 2000 on Mondays to Fridays; and 0900 to 2100 on Saturdays, Sundays and Bank Holidays.
- 6) No amplified sound or speech shall be audible outside of the hereby permitted café.
- 7) Prior to the commencement of the use of the building hereby permitted, details of the siting, design and materials of refuse and recycling storage to serve the development shall be submitted to and approved in writing by the local planning authority. The refuse storage facilities shall be provided in accordance with the approved details prior to the commencement of the use and shall be retained thereafter in accordance with those details.

End of Schedule