



Appeal Decision

Site visit made on 9 May 2023

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 31 May 2023

Appeal Ref: APP/V5570/W/22/3309051

Shop 127 Essex Road, Islington, London, N1 2SN

- 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 Ms Kaeokhamma Suphap of 1010 thai therapy and beauty against the decision of London Borough of Islington.
 - The application Ref P2022/2910/FUL, dated 6 August 2022, was refused by notice dated 3 October 2022.
 - The development proposed is change the use of the existing shop (Class E) to a massage parlour which is in a Sui Generis Use.
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Decision

1. The appeal is allowed and planning permission is granted for change the use of the existing shop (Class E) to a Massage Parlour which is in a Sui Generis Use. at Shop 127 Essex Road, London, N1 2SN in accordance with the terms of the application, Ref P2022/2910/FUL, dated 6 August 2022, subject to the following three conditions:

CONDITION 1: The development hereby submitted shall be begun not later than the expiration of three years from the date of this permission.

CONDITION 2: The development hereby approved shall be carried out in accordance with the approved plans:

T080722-01;

T080722-02.

CONDITION 3: The premises shall only be open for customers between the following hours

11:00 - 21:00hrs Monday to Saturday

11:00 - 19:00hrs Sundays and Bank Holidays.

Main Issue

2. The main issue in this appeal is the effect of the proposed development on the vitality and vibrancy of Essex Road as a commercial centre having regard to local and national economic policy.

Reasons

3. There is no dispute between the parties that the site (No 127) lies within a Secondary Frontage, in Angel Town Centre, as identified in Policies DM4.4 and

DM4.5, together with Map 4.1 of Islington's Local Plan: Development Management Policies -2013- (the DMP).

4. Policy DM4.4, together with Policy DM4.5 of the DMP seek to safeguard the retail and service function and vitality of Islington's Primary and Secondary Frontages by restricting the change of use of shop units. Part B of Policy DM4.5 relates to Secondary Frontages and sets out a number of criteria that need to be satisfied to justify a change of use from a retail use.
5. As part of the justification for any change of use the Council within Policy DM4.5 requires that premises must have been vacant for at least two years and that there is no realistic prospect of the unit being used for retail purposes. There is no disagreement that, in this case, these requirements have not been demonstrated.
6. Class E was introduced to the Town and Country Planning (Use Classes) Order 1987. It is a broad spectrum of uses that would typically be found in commercial or service areas, including retail.
7. The Council's Officer Report identifies that other criteria set out in DM4.5 would not be breached, and that the proposal, although not a Town Centre use, would be a complementary use. Nonetheless, the proposal would fail to satisfy every criteria of Policy DM4.5 of the DMP.
8. During my site visit I noticed a number of empty shop units within the Secondary Frontage. Some of these had the appearance of being empty for some time and were gaining a somewhat derelict and uncared-for appearance. This is supported by evidence provided by the appellant.
9. The appellant has drawn my attention to the unit adjacent to the appeal site, at 129 Essex Road (No 129), which previously, together with the appeal site, formed a double-fronted retail unit, selling shoes. In 2022 both units subsequently became vacant, and, that year, the appellant took over the lease of the appeal site. At the time of my visit No 129 was occupied by a shop cutting keys, but the signage on the front had the appearance of being temporary.
10. I further note that one empty unit has recently been granted planning permission¹ for a change of use from a sui generis use to retail.
11. The proposal would, in addition to providing massage, provide a variety of beauty treatments, with appointments throughout the day. The shop window and reception behind it would present an active frontage to the street, with comings and goings. Thus, the proposed development would operate in a way similar to many high street businesses, such as hairdressers, beauticians or barbers and would maintain an active shopfront.
12. The presence of empty units, particularly those that have a dilapidated appearance, would be likely to result in a degree of deterrence to visitors to the area. The active use of No 127 would counter this. The duration during which some units have lain empty indicates that finding businesses to fully occupy retail premises in the frontage may be problematic and that it is unlikely that a prospective retailer would be unable to find a premises, should No 127 convert to the proposed use.

¹ Council Ref: P2021/0269/FUL

13. The thrust of Development Plan policy, through Policies DM4.4 and 4.5 of the DMP, Policies CS14 of Islington's Core Strategy -2011- and Policy E9 of the London Plan -2021- is to support commercial activity in established locations.
14. I am mindful that the guidance given in paragraphs 81 and 82 of the National Planning Policy Framework that policies should help create the conditions in which businesses can invest, expand and adapt; and be flexible enough to accommodate needs not anticipated in the plan and to enable a rapid response to changes in economic circumstances. Further paragraph 86 advises that planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.
15. Bringing these matters together, the proposal would be contrary to part of Policy DM4.5 of the DMP. However, the proposed development would occupy a commercial unit, where there are several other empty units, which may otherwise remain empty. By so doing it would reintroduce an active front with a business complementary to other businesses in its location. Thus, the proposal would accord with the overall thrust of local and national policy to support commercial activity in town centres. I find that this overall compliance with policy, and the economic benefit therefrom, outweighs the tension with Policy DM 4.5.
16. I therefore conclude that the proposed development would not have an unacceptable effect on the vitality and vibrancy of Essex Road as a commercial centre having regard to local and national economic policy.

Conditions

17. I have had regard to the conditions suggested by the Local Planning Authority (the LPA).
18. In addition to the standard condition which limits the lifespan of the planning permission I have specified the approved plans as this provides certainty.
19. I have also added a condition limiting the hours of operation of the business so that this corresponds to those of other businesses in the area and so that no adverse impact would result to neighbouring residential amenity.
20. These correspond to the conditions suggested the LPA, however, I have amended the wording for clarity and enforceability.

Conclusion

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

I A Dyer

INSPECTOR