



Appeal Decision

Site visit made on 14 January 2024

by A. J. Boughton MA (IPSD) Dip.Arch. Dip.(Conservation) RIBA MRTPI
an Inspector appointed by the Secretary of State

Decision date: 22nd February 2024

Appeal Ref: APP/F5540/W/23/3323962

46 Devonshire Road Chiswick London W4 2HD

- 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 Robert Gillon against the decision of London Borough of Hounslow.
 - The application Ref: P/2023/0620 dated 24 February 2023 was refused by notice dated 16 May 2023.
 - The development proposed is Change of use of the first floor to restaurant (Class E).
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Decision

1. The appeal is allowed and planning permission is granted for Change of use of the first floor to restaurant (Class E) at 46 Devonshire Road Chiswick London in accordance with the terms of the application Ref: P/2023/0620 dated 24 February 2023 and the plans submitted with it subject to the schedule of conditions attached.

Application for costs

2. An application for costs was made by Mr Robert Gillon against the London Borough of Hounslow. This application is the subject of a separate Decision.

Preliminary Matter:

3. The proposal seeks change of use of upper floors currently in residential use to use class E. This would allow a variety of commercial activities to take place which I have taken into account in my decision.

Main Issues

4. The main issues are the effect of the proposal upon:
 - The amenity of neighbouring users. and
 - The supply of residential units in the area

Reasons

Residential amenity

5. Forty-six Devonshire Road (No.46) is a two-storey nineteenth-century building which is currently in mixed use with residential accommodation above premises which describe themselves as 'fishmonger and seafood bar'. No.46 is located at the junction of Devonshire Road with Ingress Street, which marks the southerly extent of a tightly defined 'leg' of the Chiswick High Road Conservation Area (CHRCA) which incorporates the sections of commercial frontage running from

Devonshire Road's junction with Chiswick High Road. These parts were included in the CHRCA as '*an important part of the economic growth of this part of the High Road*'¹ and therefore the existing use of the ground floor, its frontage, together with its traditional shopfront accords fully with, and contributes positively to, the character and appearance of the CHRCA, which, at this point, intrudes into an otherwise almost entirely residential area comprised of terraced housing, some subdivided.

6. It is clear that the existing premises are both well-used, including external seating at the frontage, but also operate within modest opening hours and that, as an established use within the residential area, provide a baseline of activity against which the impact of the proposals should be considered. Although the proposal would expand the existing use this would be entirely within the building such that the degree of change which would be experienced by neighbouring and other users, would be modest.
7. No.46 and its neighbours have small yard spaces at the rear and these sit closely against the equally small rear yards of three-storey dwellings along Annandale Road, separated by a narrow pedestrian access. The intervening distances between the opposing windows in upper parts of these buildings is in some cases no more than 5 metres; No 41 Annandale Road being subdivided into apartments with a roof terrace over its first floor outrigger. Unlike most other premises in Devonshire Road, deliveries to No.46 are made from Ingress Street and therefore at the rear/side of the property such that occupiers in nearby dwellings might be aware of activity from early morning deliveries; however this is an existing situation which the proposal would not likely change to any significant degree.
8. The proposal would incorporate the existing one-bedroomed flat found at first floor level and accessed directly from Ingress Street, into the restaurant, intending that the rear outrigger becomes, on first and second floor, a preparation area and toilets respectively, with the seating area for the restaurant use occupying the upper (first) floor of the main property, above the existing retail/eating area. Although activity in the preparation area would be related to the use of the restaurant neither that, nor the toilets above, would be such that an absence of outlook would be unacceptable or require (if provided with suitable alternative ventilation) opening windows. The leakage of sound from such will therefore be minimal.
9. Whilst normal levels of chatter and talking in the restaurant would likely merge with ambient noise levels in Devonshire Road, that would not be the case for the rear window of the Restaurant from which overlooking could also be intrusive. I note that the appellant refers to 'soundproof glazing' to all windows serving the upper floors but no further details are provided, nevertheless, as the Council appear to accept², such could be provided by a suitable condition although nothing is proposed to address the potential for impact noise from use of the proposed new stairs to the upper floor (and the floor itself) which would be appropriate to isolate adjoining users from noise generated by the use proposed.

¹ Chiswick High Road Conservation Area Appraisal 4.2.2

² In correspondence with the appellant subsequent to the decision

10. Overall, although the Council suggest that what is proposed would be 'an intensive and further noise-generating use', my observations direct there is little to indicate that what is proposed would be harmful to the overall amenity of the area if supported by suitably-worded conditions to address identified concerns affecting neighbouring users. Those would include, noting representations made, hours of operation, schemes for the management of waste and details of replacement windows and measures for acoustic separation at the party wall. Whilst the appellant uses the term 'sound-proof' in relation to windows, such a term has no technical basis and a reasonable requirement would be to mitigate as far as is reasonable the effect of the additional usage and, with regard to the adjoining users, by ensuring noise from stair traffic is not transmitted directly through the party wall and to improve the resistance of that wall to airborne noise by additional layers and airtightness.
11. I therefore conclude, on that basis, there would be no conflict with policies CC2 or EQ5 of the Hounslow Local Plan 2015-2030 (HLP) which, together, seek to protect residential amenity and reduce the impact of noise generating uses by careful design.

Principle of use

12. It appears that the existing ground floor use of No.46 has subsumed the means of access to the upper floor flat from the side access and a proposal to provide external access has been refused on amenity grounds³. This part of the building, therefore, appears to be inaccessible and therefore making no contribution to housing supply according to the plans provided.
13. The Council's first reason for refusal asserts that the loss of the first-floor one-bedroom apartment would conflict with policies SC1 and TC4 of the HLP and with Policy H8 of the London Plan. Policy H8 of the London Plan is plainly set at a strategic level and not intended as an imperative for individual housing units such as the matter here to be determined. Policy TC4 seeks to support the vitality and viability of town centres, including Chiswick, of which the appeal site forms part. Whilst the Council acknowledge that TC4 encourages the effective use of upper floors it asserts a conflict arises from the qualification at (i) that such should be consistent with other policies by reference to Policy SC1. Policy SC1, however, is a strategic, positively-framed, policy which makes no reference to loss of individual units.
14. Overall, even if the existing unit were capable of use, and even if there is a degree of conflict with these policies, in the circumstances of the matter to be determined the loss of one unit would be outweighed by the economic benefit of the additional restaurant floor space. I therefore conclude that the benefits of the proposal in terms of supporting the vitality and viability of existing town centre uses outweighs the conflicts identified and therefore the proposal accords with Policy TC4 of the HLP.

Other Matters

15. It is not disputed that the proposed works, as an internal change, would not detract from the character and appearance of the CHRCA; although not referred

³ Appeal dismissed August 2023: APP/F5540/W/22/3312981

to by the parties, I also conclude that the use, which is plainly relevant to character, aligns positively with the character of the CHRCA and the reasons for its creation. In that regard, however, it would be appropriate to ensure the fine balance between locally-relevant commercial activity which contributes to the vibrant atmosphere in Devonshire Road is not outweighed by inappropriate features such as additional signage or lighting which might draw inappropriate attention to the upper floor use. For that reason, to protect the character and appearance of the CHRCA a condition to prevent such is necessary.

Conditions and conclusion

16. I have concluded that any conflict with policies of the HLP, which my reasoning directs to be minor, is outweighed by the benefits of the scheme in terms of contribution to vitality and viability of the area and that, taking all matters raised into account, the proposal would accord with the development plan as a whole. Consequently the appeal succeeds subject to the usual planning conditions but also those which my reasoning indicates are necessary to make the proposal acceptable in planning terms as my reasons explain.

Andrew Boughton

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: ZZPLN G 1005; ZZPLN G 1015; ZZPLN G 1025; ZZPLN G 3005; ZZPLN G 3015;
3. A scheme of acoustic measures which have been previously submitted to, and approved in writing by, the local planning authority shall be completed prior to first use of the development hereby approved. The scheme shall include the following:
 - a) Measures to ensure a satisfactory acoustic performance of all first floor and second floor windows.
 - b) Measures to improve the acoustic performance of the party separating wall at first floor level between 46 and 44 Devonshire Road at first floor level, including the acoustic separation from that wall of the proposed new access stairs from ground floor level.

The development shall proceed in accordance with the approved details.

4. All windows above ground level on the rear elevation of the property shall be incapable of opening and be made incapable of outlook by obscured glazing.
5. No signage or lighting shall be erected or placed upon the exterior of the building other than that directly related to the existing shopfront.

6. A scheme for the mechanical ventilation of toilets, preparation room and restaurant area which has been previously submitted to, and approved in writing by, the local planning authority shall be completed in accordance with the approved details prior to first use of the development hereby approved.
7. The hours of use for the development hereby approved (meaning the first floor seating area) shall be limited to those of the existing ground floor use and in any event such use shall, unless otherwise approved in writing by the local planning authority, cease no later than 10.30 pm on any day.

END