



Appeal Decision

Site visit made on 29 May 2024

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2024

Appeal Ref: APP/A5840/W/23/3327785

395 Walworth Road, Southwark, London SE17 2AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Miss Fatima Sheriff of Fantas against the decision of the Council of the London Borough of Southwark.
 - The application Ref is 23/AP/0951.
 - The development proposed is a change of use from retail (class e) to hair and beauty salon, nail and retail (sui generis) non-illuminated fascia advertisement board - Revised scheme to 22/AP/0453.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the description of development above, I have removed reference to the proposal being retrospective as this is not an act of development. In addition, the description of development refers to a proposed non-illuminated advertisement fascia board, which the proposed plans show has the appellant's business name. This aspect of the proposal would require advertisement consent, which is separate to planning permission and controlled by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended). As this appeal relates to a planning application, I have limited my assessment to the planning matters only, relating to the proposed change of use, and determined the appeal on this basis.
3. I saw on my site inspection that the proposed change of use has taken place, and the use was operational within the appeal property. The appeal has been determined on this basis.
4. The National Planning Policy Framework (the Framework) was revised on 19 December 2023 and is a material consideration in planning decisions. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context, and both parties have had the opportunity to make comments on the revised Framework within their statements and final comments.
5. Both parties have referred to the planning history of the appeal site in regard to this proposed change of use, including an appeal¹ against an enforcement notice, which was dismissed, and the enforcement notice upheld with a

¹ Ref. APP/A5840/C/20/3259933

variation ('the previous appeal decision'). I have taken into account the planning history of the appeal site that I have been referred to, insofar as it is relevant to the appeal scheme.

6. The appellant stated that the appeal site is not within a conservation area, however the documentation provided by the Council clearly shows it is within the Walworth Road Conservation Area (the CA), accordingly the appeal has been determined on this basis.

Main Issues

7. The main issues are:

- The effect of the proposed development upon the living conditions of neighbouring occupiers, with particular regard to noise, disturbance and odour;
- Cycle parking; and,
- Waste storage and collection.

Reasons

Living conditions

8. The appeal property is a ground floor unit within a tall, terraced property, it is accessed from Walworth Road on its front elevation and sits amongst many other similar commercial uses on the ground floors of nearby buildings. There are 2 no. units of residential accommodation directly above this ground floor unit, they include windows on their front elevations above those of the appeal property.
9. The previous appeal decision was very clear that, without precise details, including technical information, of measures to control noise and odour from the proposed use to protect the living conditions of neighbouring occupiers, it would not be possible to condition these aspects.
10. In this case, photographs have been submitted of inside the appeal property to show the handheld equipment used, along with extraction units attached to the front window and one within the ceiling. However, there has been no noise assessment of the proposed use, including the machinery and extraction units and whether any sound insulation has been installed or is required. Nor has any precise details been submitted of the exact machinery at the premises, its technical specification, or the chemicals stored and used to allow a proper assessment of the proposed use, which may also require an assessment of odour.
11. Whilst the appellant states the extraction units meet DEFRA and WHO standards for community noise/odour, it is unclear which precise standards or how they meet them. Nor is it clear that the noise from them or their operating times would not be harmful to the neighbouring occupiers.
12. The appellant's statements about the noise levels of the machinery not causing disruption or vibration, that there would not be a high level of chemicals, and there being no music played, are not sufficient to justify the lack of technical information and assessment relating to the proposed use and operations. The Council has said the use of the nail salon could involve methacrylate and

acetone chemicals, the appellant has not disputed this, nor have they outlined exactly what they will be using, and how any odour effects from them have been adequately mitigated.

13. I acknowledge that previously there were objections raised by occupiers of the flats above the appeal site, and there have been no such objections raised during the latest application. However, that does not negate the potential effects of the proposal upon the living conditions of existing and future occupiers. In addition, whether uses nearby have extraction units or not, this proposal has to be considered on its merits, and its planning history relating to these issues is an important material planning consideration.
14. The opening times for the proposed use are noted, which include times within the evening when the use would be operational. This could be particularly unneighbourly if noise and odour is not adequately controlled at these times. Although it is said that the proposal does not include primary or secondary cooking on-site, this does not alter my findings above.
15. The appellant has stated that planning conditions could be used to control these aspects. However, with the proposed use already operational, and without the precise details of the measures already undertaken relating to noise and odour, it is unclear whether they would be acceptable, and if not, what other measures would be required, and the effects they would have, including their effect upon the external appearance of the building and the CA. As such, I am not persuaded that it would be appropriate to condition these aspects.
16. Accordingly, I therefore conclude that the proposed use would conflict with Policy D14 of The London Plan, the Spatial Development Strategy for Greater London, dated March 2021 (LP), Policies P56, P65 and P66 of the Southwark Plan 2019-2036 adopted February 2022 (SP) that amongst other things, require development to not have unacceptable effects on existing or future living conditions, including from noise and smell, to manage, minimise, and mitigate such effects, and to achieve or exceed air quality neutral standards. In addition, the proposal would also conflict with paragraph 135 of the Framework, insofar as it requires a high standard of amenity for existing and future users.

Cycle storage facilities

17. Policies T5 of the LP and Policy P53 of the SP require cycle parking to be provided in such proposed developments. Policy T5 in its attached Table 10.2 sets out that sui generis uses should use the requirements for the most appropriate similar use, which in this case would most likely be a professional services use; this requires 1 long stay space for every 175 square metres of gross external area (GEA), and 1 short stay space for either 20 or 40 square metres of GEA. Policy P53 sets out minimum cycle parking spaces within its accompanying Table 10, which states that for professional service uses (the most appropriate comparison use) 1 long stay space for every 175 square metres of GEA, with a minimum of 2 spaces, and 1 short stay space for every 20 square metres of GEA, with a minimum of 2 no. spaces should be provided. Taking the higher requirement of Policy P53, at least 2 no. long stay spaces and 2 no. short stay cycle parking spaces would be required for the proposal (depending on its precise total GEA).

18. The proposed plans are clear that no secure cycle parking is available at the appeal property, due to its limited size and lack of outdoor space.
19. There was some inconsistent information regarding the appeal site's PTAL rating, nevertheless it is located within a well-connected area, which includes a bus stop very near to the front of the appeal site, and it is within walking distance of underground and railway stations, including Kennington and Elephant and Castle. I observed that there were secure cycle parking facilities on both sides of Walworth Road and on Liverpool Grove, all very close to the appeal site, and whilst only a snapshot in time, during my site inspection there were some limited spaces available for use.
20. The Council has accepted in its statement the appellant's reasons for not being able to provide secure parking spaces at the appeal property, and state that it is minded to withdraw its objection on this matter. Nevertheless, it did not withdraw that reason for refusal.
21. I note that Policies T5 of the LP also advises Boroughs to consider alternative on-street cycle parking provision when it is not possible to accommodate the required cycle parking spaces on site. I am not aware that the Council has suggested any alternative provision in this case. Whether other nearby units have such dedicated facilities or not, it does not justify the proposal on that same basis, particularly noting the requirements of recently adopted development plan policies requiring dedicated cycle parking spaces. Had I been minded to allow the appeal, I would have sought further clarification from the parties as to whether an on-street or other solution was possible.
22. Whilst I accept the location of the appeal site is well-connected and offers good access to public transport, and there are secure cycle parking spaces on the pavements nearby, the proposal without dedicated secure cycle parking spaces either on or off site would be contrary to the requirements of Policies T4 and T5 of the LP and Policy P50 and P53 of the SP, that collectively seek to reduce the need for private car journeys, provide secure cycle parking spaces for both long and short stay, and ensure development is integrated with transport access, capacity and connectivity. In addition, the proposal would also be contrary to paragraph 116 that requires priority be given to cycle movements.

Waste storage and collection

23. The appeal property has no outside areas for the storage of waste, they have provided a photograph of their current waste storage arrangements within the appeal property. The photograph shows containers for the different types of waste (2no. food waste bin, 1no. chemical recycling bin and 1no. sanitary recycling bin), and the appellant has said the waste is brought out for collection on set days. The Council has indicated that they accept that waste has to be stored within the appeal property but pointed out there is no details of how it is collected and disposed of, and that such a use could generate considerable waste. Policy P62 of the SP states that a waste management strategy can be used when it is not possible for waste to be stored and collected on site. In this case, it would appear to be reasonable to condition this aspect, as there would be a strong likelihood that suitable arrangements can be agreed based on the information provided.
24. In the event I was minded to allow the appeal, subject to a suitably worded condition relating to a waste management strategy, the proposal could comply

with Policy P62 of the SP that amongst other things, states that when on-site waste storage and collection is not possible, a suitable waste management strategy is required that would not adversely impact amenity, access or the environment.

Other Matters

25. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires when determining proposals in conservation areas that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The CA comprises a mixture of terraced buildings, many being tall and facing Walworth Road, with commercial uses generally on their ground floors and residential uses above. In this case, the proposal relates to the use of the ground floor of the building as a hair and beauty salon and nail and retail. Its use would not be out of character with, or harmful to the CA, and the new ventilation installations on the front window are minor in scale and not overly conspicuous. Consequently, the effect of the proposals upon the CA would be neutral in this case. I also find that the proposal would ensure the character and appearance of the CA is preserved, consistent with my duty under the Act.
26. I note that the appeal site is not a listed building, and it is said to not have article 4 restrictions, however these are neutral matters that do not weigh in favour or against the proposal.
27. The appellant has cited policies of the LP and SP, and various paragraphs of the Framework, including optimising the use of the site; making an efficient use of the land including mixed use developments; supporting business and economic growth; and protecting the vitality and viability of high streets. These are all acknowledged, and there is no dispute between the parties that the principle of the proposed use is acceptable. However, the policies of the development plan and the Framework have to be read as a whole, and compliance with only part of them would be unlikely to justify the proposal as a whole.
28. In support of their appeal the appellant has drawn my attention to four examples where planning permission has been granted for the change of use of ground floor units nearby; 94-96 Walworth Road to a new dental practice²; 175A Walworth Road to a dry cleaners shop (Use Class A1)³; 114 Walworth Road to a hot food takeaway and restaurant⁴; and 322 Walworth Road to a restaurant.⁵ In all cases no conditions were imposed in respect of potential noise and odour, although from the limited information provided it is unclear whether this information formed part of the application considered by the Council, furthermore none of these uses are the same as the sui generis use of the appeal proposal. It is also not certain what type of accommodation is above these units, and the first floors of No's 175a and 322 are also set back considerably from the front elevations of these ground floor uses. All these examples were also approved prior to the adoption of the LP and the SP. I therefore attach limited weight to them, and they do not lead me to conclude differently regarding the harm identified above.

² Ref. 19/AP/1907, granted 7th August 2019.

³ Ref. 19/AP/1537, granted 17 July 2019.

⁴ Ref. 20/AP/0600, granted 3 June 2020.

⁵ Ref. 20/AP/0585, granted 28 April 2020.

Conclusion

29. Although I have found the waste storage and collection could be addressed by condition, I found the lack of secure cycle parking and the effect of the proposal upon the living conditions of neighbouring occupiers to be harmful and to conflict with policies of the development plan. As such, I regard there to be conflicts with the development plan as a whole, and material considerations, including the Framework and those raised by the appellant, do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal is dismissed.

A Hunter

INSPECTOR