



Appeal Decision

Site visit made on 25 June 2024

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th July 2024

Appeal Ref: APP/E5900/W/24/3338751

21 Whitby Street, London, E1 6JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Bindi (London) Ltd against the decision of the Council of the London Borough of Tower Hamlets.
- The application Ref is PA/22/01412.
- The application sought planning permission for change of use from unused residential refuse store to (Class E) 'Pop-up' style shop and retention of retrospective shop front without complying with conditions attached to planning permission Ref PA/21/01674, dated 20 October 2021.
- The conditions in dispute are Nos 4 and 7 which state that:
 - (4) Prior to commencement of superstructure works, a Scheme of Highway Improvement Works necessary to serve this development shall be submitted to and approved in writing by the Local Planning Authority. Works shall include but not be limited to:
 - Existing crossover on Whitby Close removed and pavement reinstated to match;These works shall be secured via Section 278 legal agreement and implemented prior to occupation of the development in accordance with details which have been submitted to and approved in writing by the Local Planning Authority.
 - (7) The usage of the (Class E) unit hereby approved is restricted for use only as a 'Pop-Up' Shop and no other use that falls within Class E within the Use Class Order.
- The reasons given for the conditions are:
 - (4) In the interests of highway and pedestrian safety, to ensure a high quality of public realm and to ensure the development is well integrated with its surroundings in accordance with the requirements of policies S.DH1 and D.TR2 of the Tower Hamlets Local Plan 2031 (2020).
 - (7) To preserve the amenity and character of the park and the amenity of the surrounding area in accordance with Local Plan (2021) including policies: S.SG2, S.TC1, D.TC3, S.DH1, D.DH2 and D.DH8.

Decision

1. The appeal is allowed and planning permission is granted for change of use from unused residential store to (Class E) 'pop up' style shop and retention of retrospective shop front at 21 Whitby Street, London, E1 6JU in accordance with the terms of the application, Ref PA/22/01412, subject to the conditions in the attached schedule.

Background and Main Issue

2. Planning permission has been granted for the change of use from unused residential refuse store to (Class E) 'Pop-up' style shop and retention of retrospective shop front. The appellant wishes to carry out the development without complying with condition 4 which requires the existing crossover on Whitby Close to be removed and pavement reinstated.
3. The appellant also wishes to alter condition 7 to allow a more flexible use of the appeal site. The Council refused the application only on matters concerning condition 4 however the application was refused in total and includes condition 7. It is noted from the details before me that the Council is satisfied with the imposition of a revised condition to address this matter. Nothing that I have read or seen suggests that a contrary view should be taken. I have therefore had regard to this in the identification of the main issue below.
4. The main issue therefore is whether condition 4 is reasonable or necessary in the interests of highway and pedestrian safety.

Reasons

5. The appeal site is a four-storey mixed use, terraced building and the application subject to this appeal concerns a residential refuse store located on the ground floor and permits the change of use to Class E.
6. I note the appellant considered that the condition was a pre-commencement condition and therefore, the condition should have been agreed in writing before the decision was issued. Section 100ZA(8) of the Town and Country Planning Act 1990 (as amended) outlines that pre-commencement condition is defined as a condition that must be complied with before any building or other operation comprised in the development is begun.
7. The condition is only triggered before works to the superstructure and as such, the wording would allow some works to take place before the condition is required to be discharged. I therefore find that the condition is not a pre-commencement condition, and the Council were not required to agree this with the appellant before being imposed on the application.
8. It is clear that the dropped kerb is no longer required, and its removal and reinstatement would result in some improvement to create a flat, even surface. However, dropped kerbs are a feature of Whitby Street with many of the other premises having long dropped kerbs immediately in front of them. The slopes are gentle and while not needed do not create a significant barrier for users of the footway to access all of these premises, including the appeal site.
9. I note that the Council also consider it would prevent vehicles from being able to turn around, manoeuvre and mount the kerb with ease. However, Whitby Street is a narrow and short street which is unlikely to be large enough to allow parking and manoeuvres and while only a snapshot in time, I witnessed no vehicular use of this road during my visit. As such, the provision of the dropped kerbs is unlikely to encourage vehicles to undertake unsafe manoeuvres or parking.
10. The appeal proposal is for a change of use of a small refuse store which is part of a larger building containing a mix of uses. The dropped kerb directly in front of the appeal site is required to be removed, however, the condition also

requires removal of another kerb which fronts the entrance to another part of the building. While I note that the appeal proposal forms part of the wider building, the requirement to remove the other kerb is an excessive and unnecessary requirement.

11. I therefore find that due to the reasons outlined, that the condition is not necessary to make the development acceptable in the interests of highway and pedestrian safety. I find that the conditions deletion would not conflict with Policies S.TR1, D.TR2 and S.DH1 of the Tower Hamlets Local Plan 2031 Adopted January 2020. Amongst other things, these seek to ensure that development priorities the needs of pedestrians and cyclists and creates well-connected, inclusive and integrated spaces.

Conditions

12. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under Section 73 of the Town and Country Planning Act 1990 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.
13. I have amended the condition 1 relating to the time to implement the permission to accord with the original planning permission and condition 2 is necessary to ensure that the development takes place in accordance with the drawings and documents. Condition 3 is required in order to ensure that the character and appearance of the area is not harmed.
14. Condition 4 and 5 are necessary in order to control the opening and delivery hours in order to ensure that the living conditions of nearby occupants are protected.
15. Condition 6 is necessary in order to protect the living conditions of neighbouring occupiers and I have also altered the wording to allow a more flexible use of the appeal building.
16. For the reasons outlined in this decision, a condition requiring the removal of the dropped kerbs at the front of the appeal site is not necessary.

Conclusion

17. For the reasons given above the appeal should be allowed.

D Wilson

INSPECTOR

Schedule of conditions

1. The development shall begin no later than three years from the 20 October 2021.
2. The development hereby permitted shall be carried out in accordance with the following documents and drawing nos:

Design and Access Statement
Transport Statement
Heritage Statement
BW1
BW2
BW3
BW4
BW5.A
3. For the lifetime of the development, the external glazed surface areas to the ground floor frontages of the development, including the shop fronts hereby approved, shall be maintained wholly transparent, shall not be mirrored, painted or otherwise obscured by blanket window transfers placed on the glazing.
4. The use hereby approved shall not operate outside of the hours stated in the following schedule:
0900 - 1800 - Monday
0900 - 1800 - Tuesday
0900 - 1800 - Wednesday
0900 - 1800 - Thursday
0900 - 1800 - Friday
0900 - 1800 - Saturday
1000 - 1600 - Sunday
1000 - 1600 - Bank holidays
5. No deliveries nor collections/ loading nor unloading shall occur at the development hereby approved other than between the hours of 08:00 to 20:00 on Monday to Saturdays and at no time on Sundays and Public/Bank Holidays.
6. The usage of the (Class E) unit hereby approved is restricted for use only as E (a), (c), (e) and (g (i)) only and no other use that falls within Class E within the Town and Country Planning (Use Classes) Order 1987 as amended.