



Appeal Decision

Site visit made on 18 February 2014

by **P Eggleton BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 March 2014

Appeal Ref: APP/X5210/A/13/2204843

46 Birchington Road, London NW6 4LJ

- 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 B Baker against the decision of the Council of the London Borough of Camden.
 - The application Ref 2013/1491/P was refused by notice dated 2 July 2013.
 - The development proposed is the change of use of the ground floor and basement from shop (Class A1) to restaurant (Class A3).
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Application for Costs

1. An application for costs was made by Mr B Baker against the Council of the London Borough of Camden and is the subject of a separate decision.

Decision

2. The appeal is dismissed.

Main Issues

3. The main issues are the effect on the character and appearance of the area; and the effect on the living conditions of neighbouring residents with regard to noise.

Reasons

4. The proposal would result in this retail unit and basement being converted to a restaurant. An existing retail unit would remain to one side of the property. To the other side there is a bank which has a frontage onto Kilburn High Road. The property lies within the Kilburn High Road Town Centre, identified in Camden Policy Guidance 5: Town Centres, Retail and Employment Supplementary Planning Document (CPG5). It does not form part of the identified commercial frontages of the centre.
 5. Policy CS7 of the Core Strategy 2010 (CS) seeks to protect and promote small and independent shops and resist the loss of shops where this would cause harm to the character and function of the centre. Policy DP12 of the Camden Development Policies 2010 (CDP) includes similar aspirations. This use would not breach either the frontage requirements of CPG5 or result in a concentration of Class A3 uses. The Council acknowledge that given that the
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property is not one of the frontage units, its loss would not harm the retail function or character of the town centre.

6. CPG5 does list information that may be required when considering the loss of retail units. However, given that the proposal would not conflict with its requirements in relation to frontages or concentrations of uses, I am not satisfied that additional evidence is necessary. Overall, the proposal would not result in harm to the character of the centre, or its vitality or viability. As it would replace an existing commercial property, it would have little impact on the wider character of this area. I find that it represents an appropriate and efficient use of this property.
7. The Council's main concern relates to the operation of the restaurant and the impact of this on nearby residential properties. It was clear from my visit that this road is busy during the day due to it being part of the commercial centre and close to the main frontages of Kilburn High Road. There are many night-time activities associated with the centre and I have no evidence to suggest that this road does not play a part in providing access and parking during the evenings. The proposed use would be likely to generate more comings and goings at a later time than a retail use. However, I am not persuaded that this would significantly alter the levels of activity within this street or that it would materially alter its character.
8. There is potential for customers of the premises to cause noise when arriving or leaving the property. The entrance is however set away from the residential properties to the east, there are no residential properties directly opposite and the flats on Kilburn High Road are screened, to a large extent, by the form of the building.
9. The layout of the accommodation above is such that only the living area of one of the flats, 46A, faces the street. Although I note the information within the Noise Impact report, the comings and goings of customers, particularly late at night, are likely to have a greater potential to disturb the residents within the living room of the first floor flat than a retail operation. I consider however, that appropriate measures in relation to the forward facing windows would satisfactorily limit this impact.
10. As the property contains two flats above the commercial area, insulation levels between the ground and first floor would need to be sufficient to limit noise from inside the restaurant. The noise report indicates that a high level of insulation would be achieved and I am satisfied that such works could be required by condition.
11. The details do not demonstrate an intention to use the outdoor area for customers. Such a use could result in disturbance to the residents of flat 46A in particular. The management of activity in this area would need to be closely controlled but I am satisfied that this could also be achieved by a management condition, particularly with regard to times of use of this area.
12. The Council have concerns regarding the extractor systems. The ducting would have to pass through the flat above due to the constraints of the site. The plans provide an indication of where the flues would be located. Full details of the system have not been included but a noise impact assessment has been submitted. The officer report advises that the noise assessment is insufficient

- to demonstrate that the extractor would meet the Council's requirements. It advises that details of the proposed plant and a full diagram of the proposal would be necessary.
13. Reference is made to the requirements of CPD Policy DP28 and paragraph 4.12 of Camden Planning Guidance 6: Amenity 2011 (CPG6). The policy seeks to ensure that noise and vibration is controlled and managed but does not specify what details are necessary to determine this. CPG6 requires detailed acoustic/noise and vibration information including details of the plant on plans and elevations; manufacturers specifications; and noise and vibration output. Both the policy and CPG6 form part of the Local Development Framework and are consistent with the amenity requirements of the *National Planning Policy Framework*. I afford them both considerable weight.
 14. The noise report includes many of the requirements of CPG6 but does not include details of the equipment to be used. It establishes plant noise limits that must be achieved at the nearest noise sensitive properties and advises that mitigation measures should be incorporated into the design, where deemed necessary, in order to achieve these limits. A further report was submitted as part of the appeal. This sets out conditions thought to be appropriate and concludes that it would be straightforward to achieve the target noise levels.
 15. As the extractor flue passes through the flat above, it is essential that noise controls are adequate and practical. I note that the acoustic report suggests that standard equipment could be utilised but this has not been demonstrated. Whilst I can appreciate that the appellant does not wish to fully commit to exact particulars of an extraction system at this stage, I consider it reasonable to require that it be demonstrated that an indicative extraction system and representative equipment, together with necessary mitigation measures, could be installed without harm to the amenities of the residents above. The details submitted do not demonstrate this or provide any indication of the scale or nature of the mitigation requirements that would be necessary within the living area of flat 46B.
 16. I note the examples submitted with regard to other permissions that have included conditions relating to this matter, including an appeal. These appear to pre-date CPG6 but in any event, I am unable, on the basis of the evidence submitted, to establish that the circumstances of any of those decisions are directly comparable to this case.
 17. I acknowledge that the rear of the property, where the outlets would be located, is relatively remote from other residential accommodation. I have no reason to believe that ventilation and extraction systems in this area would not operate effectively. However, I am not persuaded by the information submitted that the equipment and the flue would not result in harm to the residents of the rear flat. I see no reason, in these circumstances, to depart from the clear requirements of the Council's guidance.
 18. CS Policy CS5 and CDP Policy DP26 require that the impact on occupiers and neighbours are fully considered. CS Policy CS7 includes more specific requirements regarding food and drink uses. CDP Policy DP12 includes similar requirements and advises that conditions will be used to manage various

matters including hours of operation, noise/vibration, fumes and the setting of plant and machinery. I am satisfied that the use could operate, subject to appropriate conditions, without harm to the area or surrounding properties. However, given the circumstances of this case, I am not satisfied that conditions would adequately address concerns regarding the extraction system in relation to flat 46B. I therefore find some conflict with these policies.

19. I acknowledge that the proposal would result in a beneficial use of this building which would support the Kilburn High Road centre. Subject to appropriate conditions, it would not result in harm to the character of the area or the amenities of neighbouring residents. The amenities of the residents of the flats above could also, for the most part, be protected by measures set out in conditions suggested by the parties. However, because of the intimate relationship between the extractor system and the living room of flat 46B, I consider it necessary that the details demonstrate that it could operate without harm to the amenities of the occupants of that accommodation. I am not satisfied that conditions should be relied upon in these circumstances as the scale and nature of the mitigation measures have not been defined. I find no reason to depart from the requirements of the Council's guidance. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR