



Appeal Decision

Site visit made on 23 July 2013

by Nigel Burrows BA MRTPI

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

Decision date: 14 August 2013

Appeal Ref: APP/X5210/A/13/2196312

16 Fortress Road, Kentish Town, London, NW5 2EU

- 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 Gavin Juniper against the decision of the Council of the London Borough of Camden.
 - The application Ref 2012/6746/P, dated 13 December 2012, was refused by notice dated 11 March 2013.
 - The development proposed is described as 'Change of use A1 to A2 for Estate Agent/Architectural/Interior Design Consultancy'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the implications of the change of use of the premises for the vitality, viability and attractiveness of the town centre within Kentish Town.

Reasons

3. The appeal relates to part of the ground floor of a mid-terrace building situated upon the east side of Fortress Road within Kentish Town. The Council confirms that the appeal premises lie within a designated secondary frontage of the town centre.
4. The appellant seeks permission to use the front portion of the ground floor for A2 purposes, as indicated in the description of the development above¹. At the time of my visit, the premises appeared to be used as an estate agency, albeit there also appeared to be rudimentary 'café' type facilities and seating near the entrance. The premises were apparently vacant when the application was lodged. The application form indicates that a former use of the unit as a sandwich bar had ceased in October 2012.
5. The development plan for the area includes the Council's Core Strategy and Development Policies, which were adopted in 2010 as part of the Local Development Framework. Policy CS7 of the Core Strategy (CS) seeks to protect and enhance Camden's centres and shops. Amongst other things, this policy requires the provision and maintenance of a range of shops, services, food, drink and entertainment and other suitable uses, in order to provide variety, vibrancy and choice. Furthermore, the policy also seeks to protect and promote small and independent shops; the loss of shops will be resisted where this would harm the character and function of a centre.
6. Policy DP12 of the Council's Development Policies has similar objectives and requires consideration to be given to the effect of non-retail development on shopping provision and the character of a centre. The Council has also adopted Supplementary Planning

¹ The Council indicates the rear part of the ground floor has been used for residential purposes in breach of planning control

Guidance (SPD) in support of these policies, including Camden Planning Guidance 5: 'Town Centres, Retail and Employment'. Paragraph 3.46 of the SPD indicates the Council will resist proposals that would result in less than 50% of the premises in secondary frontages being in retail use. Paragraph 3.48 also indicates proposals that result in more than 3 consecutive premises in non-retail use within secondary frontages will be resisted.

7. The Council indicates that for the purposes of the policies and SPD, the extent of the relevant secondary frontage in this instance is the parade of properties on this side of Fortress Road which lie between its junctions with Fortress Grove and Falkland Road. The appellant infers the Council has not considered the frontages on both sides of the road, or elsewhere. However, the Council's approach is logical and appears to reflect the extent of the designated secondary frontage upon this side of Fortress Road. The Council calculates the proposal would result in 77% of the premises within this frontage being in non-retail use and it would also result in more than 3 consecutive premises in non-retail use. As such, the proposal would be inconsistent with the SPD guidance.
8. The appellant claims there are a number of vacant units in the vicinity, which suggests there is not a strong demand for retail units. According to the Council only 2 units in the secondary frontage are vacant - albeit the Council appears to have included the appeal site. In any event, such a potential indicator of the health of the frontage and town centre should be used with care, particularly in view of the current economic climate.
9. The appellant alleges the premises were previously vacant for a considerable period. However, the planning application form suggests otherwise. The appellant also argues the proposal would secure an active use of premises that would otherwise be vacant and it would have minimal impact on the building with few external changes. Nevertheless, the proposal would increase the concentration of non-retail uses in this location, thereby further weakening the retail offer and character of the parade. It would undermine the careful balance the Council seeks to maintain between retail and other uses within secondary frontages and would compromise the Council's efforts to protect and promote small, independent shops within secondary locations such as this.
10. The submissions made on the appellant's behalf appear to infer the principal use of the premises would be as 'a coffee shop' with an 'ancillary element of the site operating in Class A2'. The inference is this could take place without the need for planning permission. In any event, this does not appear to form part of the development for which planning permission is currently sought (as described in the application form and the Council's refusal notice). Whilst reference is made to a 'property café' operated elsewhere by the appellant, this does not appear to be the proposal subject of the application. The grounds of appeal state the use would be 'primarily an estate agency'.
11. I have borne in mind the recent changes to permitted development rights, which would allow A2 uses to be operated in retail premises for up to two years. This may well be the appellant's potential fallback position. Nevertheless, the unit would be required to revert back to its previous lawful use at the end of the period of 'flexible use'. Consequently, the exercise of permitted development rights should not compromise the overall objectives of the Council's policies and SPD, unlike the current proposal.
12. The appellant emphasises there is a trend towards a greater diversity of uses in town centres, which has been recognised by the Government. I acknowledge the vitality and viability of town centres depends on more than retailing and stems from the range and quality of activities on offer. However, in this case the proposal would unacceptably dilute the retail offer, character and vibrancy of the secondary frontage and consequently it would diminish the overall vitality, viability and attractiveness of the town centre. In this respect, it conflicts with the objectives of policies CS7 and DP12.
13. I consider the various benefits envisaged by the appellant in relation to this proposal are clearly outweighed by the planning policy objection to the development. Whilst secondary frontages do not offer prime shopping, they do provide for many of the smaller specialist shops and services that make a town centre attractive. It is therefore

important to keep a substantial number of shops in these locations to provide for the specialist or smaller retailers that find it difficult to locate in the core areas.

14. The policies on which the Council relies are broadly consistent with the aims of the National Planning Policy Framework (the NPPF - published in March 2012), including the commitment to secure sustainable economic growth and to support the viability and vitality of town centres. I therefore give them significant weight. It is not obvious to me that the objections to this proposal could be overcome by appropriate planning conditions. The appellant appears to suggest that a 'personal' permission might mitigate any harm arising from the proposal. However, it is generally accepted that planning permission runs with the land and it is seldom desirable to provide otherwise.
15. I have therefore concluded that the appeal should not succeed. I have taken into account all the other matters raised in the representations, including the limited size of the appeal premises and the Council's references to its planning history, but I find they do not alter or outweigh the main considerations that have led to my decision.

Nigel Burrows

INSPECTOR